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Supreme Court of the United States

OCTOBER TERM 1924, No. 629.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,

Appellant,

against

THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON and I. W. GEER,

Appellees.

BRIEF FOR APPELLANT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

THE PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, Appellant, *against* THE PENNSYLVANIA RAILROAD COMPANY, SAMUEL REA, W. W. ATTERBURY, ELISHA LEE, GEORGE L. PECK, C. S. KRICK, M. W. CLEMENT, T. B. HAMILTON and I. W. GEER, Appellees.	October Term 1924 No. 629.

I.

STATEMENT OF THE CASE.

1. The action an appeal.

This is an appeal from a decree of the Circuit Court of Appeals of the Third Circuit, affirming a decree of the District Court for the Eastern District of Pennsylvania dismissing the bill. The case was heard in the District Court upon the bill, answer and exhibits filed in support of the bill.

The action involves a controversy arising under the laws of the United States, to wit, the construction of Title III of the Transportation Act of 1920.

2. The names of the parties.

The appellant is an organization of clerical and station employees of the Pennsylvania Railroad System.

It brings this action as representative of its membership and for the benefit of all clerical and station employees of the said System.

The defendants are the Pennsylvania Railroad Co. and its chief officers. The Pennsylvania Railroad Co. is a corporation organized and existing under the laws of the State of Pennsylvania, having its main office, and doing business in the Eastern District of Pennsylvania. The Pennsylvania Railroad Co. controls through stock ownership, leases, and otherwise, a number of railroad carriers whose properties it operates in the states of Pennsylvania, New York, New Jersey, Delaware, Maryland, District of Columbia, West Virginia, Ohio, Kentucky, Indiana and Missouri, as the Pennsylvania Railroad System. The other defendants are the president, vice-president in charge of operation, vice-president in charge of personnel of the Pennsylvania Railroad Co., vice-president of the Eastern Region of the Pennsylvania Railroad Co., the general manager of the Eastern Region, of the Pennsylvania Railroad Company, the general manager of the Central Region of the Pennsylvania Railroad System, the general manager of the Northwestern Region of the System, and the general manager of the Southwestern Region of the System.

3. The nature of the proceedings:

This is a proceeding in equity for an injunction. The bill charges that the opportunity and right of clerical and station employees to utilize the procedure of Title III of the Transportation Act of 1920 has been completely cut off by the defendants. This has been accomplished

by establishing machinery and practices designed to have that effect. This machinery consists of "Associations of Employees" without dues or other means of self support and with such constitutions and by-laws as enable the defendants to control them. These practises consist of the financing of these associations with the funds of the Pennsylvania Railroad System, the exercise of control over them by the defendants, the power exercised by these associations over the designation by employees of their representatives to confer with the management, the exclusive recognition by the defendants of these associations and their committeemen as the representatives of employees, coercion of employees into joining these associations and false representations by defendants as to the nature of these associations and their acts.

It is submitted that the institution of these practises in concert by the defendants in May, 1921, was an unlawful conspiracy to prevent employees from utilizing Title III of the Transportation Act of 1920, that this purpose appears by irresistible inference, that this purpose was illegal, that the practises stated were designed to effectuate and do effectuate the illegal purpose and that all these practises are accordingly illegal, and that they are illegal also because subversive of the rights of the public and of the employees and of the duties of the defendants under Title III, and because subversive of the purposes of Congress in enacting that Title. Accordingly, the prayer asks that these practises be enjoined.

4. Legal Basis of Action.

The appellant's case is based upon Title III of the Transportation Act. (Printed as Appendix A hereto.)

This is a regulation of the employment status of officers and employees of interstate commerce. Its object is to further in the public interest the non-interruption of railroad operation by strikes. To that end it imposes duties on and grants correlative rights to such officers and employees. To aid the accomplishment of its object,

the duty is imposed on both to use their best efforts to adjust differences and specifically to designate representatives to confer and to endeavor to reach an agreement and to refer the controversy to the Labor Board for decision in case of an agreement is not reached in conference (Sec. 301). These duties are imposed primarily in the public interest.

By necessary implication, the duty to confer and to refer involves the duty to select representatives for these purposes and to refrain from interference with selection by the other party and from interference with the functioning of such representatives. The selection of representatives by employees, conference and reference, necessarily involves collective processes. It is the duty of officers (managements) to refrain from interference with these processes. These duties also are imposed primarily in the public interest. The performance of them brings about the action and situation which Congress believed would tend to prevent the interruption of operation by strikes, to wit:

(1) The opportunity to officers and employees to present to each other in formal conference the matters in controversy.
(2) The opportunity to refer controversies undecided in conference to the Labor Board.
(3) The establishment of a period during which the status quo shall be preserved, to wit, the period between the presentation of the dispute to the conference and decision by the Labor Board, to the end that violent feeling might be allayed, impetuous action restrained and the public interest be considered.
(4) The opportunity for the formation of an intelligent public opinion guided and instructed by the public presentation of the controversy to the Labor Board and by the Board's decision.

Title III is thus a regulation declaring the public interest in uninterrupted operation and a regulation of the employment status of officers and employees of inter-

state carriers, attaching to the status duties the performance of which tends to further the object stated. The imposition of these duties on the officers of railroads raises a correlative right in employees to performance. A statement of the rights correlative to the said duties follows:

1. In general, the right of employees and managements to avail themselves of the procedure provided by the Title toward the establishment of just and reasonable wages and working conditions.
2. The right to initiate and conduct action toward ascertainment of the will of the employing corporation or of the class of employees concerned with regard to conditions of employment and with a view to the presentation of this will to the other party as a collective request.
3. The right of the management and of the employees of any class to designate and authorize representatives to represent it in conference and to conduct the presentation of the collective will in conference.
4. The right of each to have the other designate representatives to meet and confer with its representatives and endeavor in good faith so to adjust the controversy.
5. The right of each to refer the dispute to the Railroad Labor Board in case it remains a dispute after the conference.
6. The right of each to present to the Labor Board through representatives its position on the pending dispute.
7. The right of each to the decision of the Board and to the publication of the Board's decision and to the effect of such publication on the other and to the effect of such publication on public opinion.
8. The right of each through its representatives to apply to the Board for compulsory process for witnesses and papers and the right to make application to the Board for a contempt finding and the right to the effect of the publication of such finding on public opinion and on the other.

Congress has declared it necessary in the public interest that there be opportunity to exercise these rights.

5. Summary of bill and prayer. (Record, pp. 4-33.)

The bill charges that the defendants are continuously obstructing the exercise of these rights by the station and clerical employees of the Pennsylvania System. The obstructive practices are:—

The establishment, maintenance, support and control by the management of the Pennsylvania Railroad System of associations of clerical and station employees. These associations are supported entirely by the funds of the Pennsylvania Railroad system. They have no dues or other means of self support. Their officers and committeemen are paid from the funds of the Pennsylvania Railroad System for their work in behalf of such associations. The system pays all expenses of the associations, provides them with offices and issues continuous propaganda on their behalf. By the By-Laws of these associations regional joint committees are established. These regional joint committees, according to the by-laws, control the action of the associations, including its action on disputes with regard to wages or working conditions. Officers of the Pennsylvania Railroad System constitute one-half of the membership of these joint controlling committees. No action can be taken by these committees except by a two-thirds vote. Except by the consent of the officers of the Pennsylvania Railroad System, members of the committee, the associations can refer no dispute to the Labor Board.

The management of the Pennsylvania Railroad System refuses to recognize or to confer with any other association or organization of clerical or of station employees with regard to the wages and working conditions of these employees.

The management has thus made these associations the only avenue to Title III procedure and dominates and controls this sole avenue.

The right and opportunity of employees to select their own representatives and through them to confer with the management is essential to the procedure established by Title III. This right and opportunity is frustrated and denied. The effect and object of the maintenance and control of these associations by the management, together with other machinery, practises and policies sought to be enjoined, is utterly to preclude and prevent the said employees from utilizing the procedure and exercising the rights afforded them by Title III, and to evade the performance of duties imposed by said Title on the management, to substitute for the method commanded by Congress a method utterly destructive thereof and thus by increasing the risk of interruption of operation by strikes to violate the public policy declared by the Title.

Relief prayed for: The bill prays for an injunction restraining the defendants from continuing to finance these associations and from permitting the officers of the Pennsylvania System to serve as members of the regional joint committees of these associations, from controlling or attempting to control the designation of representatives by the clerical and station employees, from participating in the conduct of elections for the designation of representatives by the said employees, from coercing the employees into joining their associations, from conferring with the committeemen of these associations as the representatives of the employees and for other relief specified.

(Prayer, record pages 30-33, Secs. 106-114 inclusive.)

6. Abstract of bill and answer.

In order to show that there is no substantial disagreement as to the facts and to present more clearly the questions involved and the manner in which they are raised, an abstract of the bill and answer follows:

The Bill: After describing the appellant and its parent organization, the Brotherhood of Railway Clerks, the representative character of the appellant, the citizenship of the appellant's membership, naming the defendants and stating the Federal question involved, the bill proceeds (Secs. 23-37, pages 7-11, inc.) to set out the events leading up to the conspiracy charged.

These allegations are admitted by the answer (record, page 36).

The bill (section 39, page 12) charges a conspiracy entered into by defendants on or about May 1, 1921 to obstruct the exercise by the employees of the rights stated and describes the plan adopted and applied by the defendants to effectuate this object.

The seven steps or subdivisions of the plan are then set out (Sections 40-54, pp. 12-16, inc.).

The first step (Sections 41-42) was to deprive the employees of leadership by preventing them from designating an organization as their representative to confer with the management.

The second step (Sections 43-45) was to prevent the employees from designating the appellant, the only functioning organization.

The third step (Section 46) was to divide the employees into regions and districts and require them to designate persons actively employed in the district as district representatives, and also to declare elected the person receiving a plurality of votes, although such plurality might be only an infinitesimal minority.

The fourth step (Sections 48-49) was to enter into purported agreements with the individuals receiving the highest vote cast for individuals and to put these agreements in effect as agreed to by the body of employees affected through their representatives.

The fifth step (Section 50) was to establish associations of clerical and of station employees in the several regions in substitution for the appellant's organization, these to have no dues or other means of self-support, but to be supported entirely by the funds of the Pennsylvania System and to be controlled by the officers of that System.

The sixth step (Section 52) was to constitute these associations exclusive representatives of the employees in relations with the management.

The seventh step (Section 53) was to establish by agreement with purported representatives of employees by-laws governing these associations, which were to provide exclusive procedure for the adjustment of controversies between the employees and the management and to provide for regional joint committees—controlling committees made up of an equal number of officers of the system and of purported representatives of the employees—such regional joint committees to be the final committee with power to decide controversies, and all action to be by two-thirds vote.

The bill alleges that the intent, object and purpose of these several steps was to prevent the employees from utilizing the procedure of Title III.

The answer denies that the defendants entered into any such conspiracy or adopted a plan with any such object, purpose or intent.

The bill then proceeds to set out the acts of the defendants which show that the intent, purpose and object of defendants was to obstruct employees as stated.

These acts are denominated the means applied to effect the object of the conspiracy (bill, secs. 65-92).

The defendant Atterbury's announcement of May 24, 1921, is set out (bill Sec. 57, Exhibit E, Record pp. 70-76 inc.). This states that Decision 119 of the Railroad Labor Board declares that employees have the right to select representatives from among their own number (to confer with the management on rules to govern working conditions), that detailed conditions, "designed solely to secure an accurate expression of the desires of the employees, under which representatives will be chosen, will be announced later, that the men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen."

At the same time, avers the bill, (Sec. 58) the defendants without consent of the employees promulgated the rules to govern the election of representatives which fixed the method of nomination, the form of ballot, the qualifications for voting, provided that a plurality though a minority might elect, divided the system into regions and districts within which employees were to vote severally for representatives of employees employed in the district, and with a view to the establishment of regional agreements and associations. These election rules denied the opportunity to employees to designate an organization of employees as their representative, (Secs. 62-63) permitted the defendants to declare elected persons receiving a minority of the votes cast (Sec. 65), and created a large number of election districts within each of which the employees were to select three employees of that district to act as their representative. (Sec. 66).

The answer admits these averments (Record, p. 57).

The bill then avers (Sec. 61 that the said rules and the holding of the election were unlawful because Title III requires the maintenance of the status quo pending the Labor Board's decision on disputes, and proceedings were then pending before the Labor Board as to the legality of the elections. (Sec. 66.)

By reason of the unlawfulness of the election a great number of the employees of the classes concerned refused to vote. (Sec. 67.) Nevertheless, the defendants, avers the bill (Sec. 68), held the election on May 29, 1921, themselves designated as representatives of employees persons receiving but a small percentage of the vote, far less than a majority, and conferred divisionally and regionally with the so-called representatives and entered into so-called agreements with them establishing working conditions of the classes concerned and established regional associations of employees, more particularly described later.

The answer (page 38) admits these averments (68).

The bill then charges (Sec. 69) that these regional agreements, regulations and associations were created by the defendants to further the object of the defendants' conspiracy.

Two forms of ballot were provided, one for clerical employees and one for station and other employees. (Sec. 70.)

In two of the regions set up by the company for the election of representatives of clerical employees, a majority of those voting voted for the Brotherhood of Railway Clerks. These votes were declared void and thrown out. These regions were the northwestern where 1911 ballots were cast for the Brotherhood out of a total of 1934 votes, and the southwestern region where 1375 votes were cast for the Brotherhood out of a total of 1820. In the central region 1165 votes were cast for the Brotherhood out of 3900 votes. (Sec. 70)

Out of 27,839 clerical employees held eligible to vote at this election by the defendants, 18,692 voted; of these 996 cast blank or defective ballots; out of 17,696 effective ballots cast on the System 4,612 were cast for the Brotherhood of Railway Clerks. More than 9,000 clerical employees declared by the defendants eligible to vote did not vote (Secs. 71-72).

As to station employees; in the southwestern region, out of 665 votes for this class, 560 voted for the Brotherhood of Railway Clerks. In the northwestern region out of 1,071 votes cast, 837 voted for the Brotherhood; in the central region out of 1,267 votes cast, 900 voted for it. All these votes were thrown out. Out of 6,202 votes by this class, 435 were blank or defective; out of 5,767 effective votes cast, 3,102 were cast for the Brotherhood. Thus the Brotherhood had a substantial majority on the System of the employees of this class, as well as a majority in three of the five regions established by the defendants (See p. 73, Exhibit G, p. 82).

The bill then (Sec. 76) sets out characteristic details of the election. On the Akron division, where there were 172 clerks, the defendants declared elected (designated as representatives of employees) committeemen who received respectively 5, 5 and 4 votes. On the eastern division, central region, 750 votes were cast; committeemen were declared elected who received respectively 94, 65 and 61 votes. On the Pittsburgh division, out of 1,345 votes cast, committeemen were declared elected who received respectively 151, 147 and 146 votes. On the Renovo division, out of 305 votes, a committeeman was declared elected who received 19 votes. On the Baltimore division, eastern region, 416 votes were cast for the Brotherhood of Railway Clerks. These votes were thrown out and a committeeman declared elected who received but 28 votes. On the Chicago Terminal division, northwestern region, the Brotherhood received 495 votes, but committeemen were declared elected who received respectively 105-83 and 76 votes.

The answer admits the allegations of the bill with regard to the votes at this election (see answer Record, p. 38).

The bill then proceeds to aver in paragraph 77 that the defendants in pursuance of the object of their conspiracy met with the persons declared by them to have been elected in meetings purporting to be conferences within the meaning of Section 301 of Title III. These meetings were held in Philadelphia on or about July 5, 1921 with regard to the Eastern Region and with regard to other regions at Pittsburgh, Chicago and St. Louis on or about the same date.

Paragraph 79 of the bill recites what was done at these purported conferences. Defendants there persuaded the purported representative to agree to certain "regulations". These "regulations" embodied rules and working conditions for this class of employees. The

defendants and the purported representatives then proceeded to execute the said "regulations" as agreements purported to have been entered into by the general manager of each region and committees purporting to represent the body or class of clerical employees of each region. Similar "regulations" embodying rules covering station and other employees were executed by the general managers and by the committees purporting to represent the body or class of the miscellaneous forces. The management then in pursuance of its conspiracy declared these regulations to be the basis of the employment contracts between the Pennsylvania Railroad System and the clerical and station employees of the several regions and put them into effect as having been agreed to by the body or class of said employees through their representatives. The bill then avers (Sec. 80), that these purported representatives did not in fact represent the clerical or station employees, but were, to all intents and purposes, selected by the management as representatives of the said employees and that in truth and fact, the "regulations" had not been agreed to by the body of employees concerned.

The answer states with regard to these averments (paragraphs 77-82 inc.) that the defendants held meetings and conferences with the representatives of the clerical and station employees and avers that the said representatives were duly and legally chosen and empowered to confer with defendants on such matters.

The bill then recites the establishment of the regional associations (Sec. 81). About August 1, 1921 the defendants met with the persons declared by them to have been designated as representatives of the clerical employees of the eastern region and persuaded these employees to agree to the establishment of an association known as the "Clerks Association of the Operating Department of the Pennsylvania Railroad System, Eastern Region". About the same time defendants met with the

purported representatives of employees in other regions —Pittsburgh, Altoona, Chicago and St. Louis and persuaded them to agree to the establishment of similar organizations for the several other regions.

Section 82 of the bill recites the establishment by the defendants of regional associations for station employees of the eastern district and for the several other regions of the Pennsylvania System.

Section 83 states that the said associations have no dues or other provisions for the financial support of their officers, agents, or representatives designated to utilize Title III or otherwise.

Section 84 states that the defendants paid with funds of the defendant corporation, from time to time, persons purporting to act as representatives of the employees for the time occupied with the business of such purported representation and have since and are now paying such persons in that regard and are paying with funds of the defendant corporation expenses of the said associations.

The defendant's answer admits these allegations (Record, p. 39).

Section 85 of the bill avers that the defendants at various times prior to and since August 1, 1921 has published at the expense of the Pennsylvania Railroad Company bylaws of the "Clerk's Association" and of the "Miscellaneous Forces Association" of the several regions.

Section 86 avers that the bylaws provide that controversies between the management and employees of this class shall be handled by the several committees established thereunder up to the "joint regional committees". These joint regional committees are composed one-half of the officers of the company and one-half of the so-called representatives of employees. It is made the function of the joint regional committees to decide con-

troversies between management and employees of the classes concerned which remain undecided by the subordinate committees. A two-thirds vote of the members of the joint regional committee is necessary to reach a decision. One-half of the members of the joint regional committee are officers of the Pennsylvania System.

The answer (p. 39) admits these averments.

Sections 87, 88 and 89 of the bill aver the inference to be drawn from the bylaws with regard to the joint regional committees. It is averred that by reason of these bylaws the management is enabled to prevent a reference of any dispute to the Labor Board although all employee "representatives" vote for said reference. It is averred that these provisions are unlawful because they are inconsistent with Title III and destructive of its intent and render such bylaws unlawful. It is also averred in Section 89 that bylaws are unlawful because adopted and established as means in pursuance of said unlawful object and conspiracy of defendants. Copies of the bylaws in effect on the eastern region which are substantially identical with the bylaws of other regions, are set out bill marked, Exhibits "I" and "J" (Record, 88-129).

The authenticity of these exhibits is admitted by the defendants (Record, p. 39).

Section 93 of the bill avers that the defendants since April 15, 1921 have refused and still refuse to confer with appellant as representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, and require that all matters of controversy between the management and employees be handled through said regional associations.

It is then averred (Section 94) that the said associations have no provisions for dues or other means of self support and that the said associations are unable to act toward the utilization of Title III, except as the management may permit.

By the establishment of these associations and the managements exclusive dealing with them all action of clerical and station employees, members or non members of said association, toward the utilization of Title III is obstructed and defeated.

The answer denies these averments.

Section 95 of the bill avers that the defendants intend to continue expending large amounts of funds of the Pennsylvania Railroad Company in compensating the said purported representatives for time employed in that regard, in paying the expenses of said associations and in paying expenses of elections to elect "representatives"—all in pursuance of the object of the conspiracy. The averments of this subsection are denied by the answer.

The bill then (Sec. 96) describes Decision 220 of the U. S. Railroad Labor Board, dated August 3, 1921, by which the Board held the election of May 29, 1921 illegal and void and the alleged "agreements" and "regulations" void and of no effect. These averments are admitted by the defendants' answer (page 39).

Section 97 of the bill avers that the continued refusal of the defendants to permit the employees to designate an organization as their representative and their continued frustration of the most practical and convenient method whereby the employees can act toward the utilization of Title III, and their continued refusal to confer with appellant as representative of said employees or as representatives of its membership, who are employees of the System, and the requirement that all subjects of dispute be handled pursuant to the bylaws of the regional associations, have had the effect of influencing large numbers of the employees of these classes into voting at the elections conducted by the defendants and into joining the associations set up by them. These employees, avers the bill, have abandoned hope of the free exercise of the rights afforded them by Title III and are persuaded that

the defendants have succeeded in preventing them from utilizing the procedure afforded by the Title and that the defendants have rendered their right of no avail, and that they may receive some benefits by participation in said elections and through the associations established by the defendants. This is denied by the answer (Rec., p. 39).

Section 98 avers coercion by the subordinate officers of the Pennsylvania Railroad System of the employees into accepting and signing for ballots for elections and into becoming members of the associations by threatening discharge. Affidavits supporting the charges of coercion were submitted to the Railroad Labor Board in Docket No. 405, May, 1923; certified copy of these affidavits is annexed to the bill marked Exhibit "K".

Section 99 of the bill avers that these unlawful acts of the defendants have detached from membership in appellant's organization a number of its former members and will continue, if unrestrained, to detach others. The said unlawful acts are promoting and, if unrestrained, will continue to promote the object of said conspiracy of defendants, officers of the System, by reducing the ability of the clerical and station employees to act toward the utilization of Title III; the said Brotherhood of Railway Clerks being the only organization available to these employees equipped with machinery necessary for the utilization of said title.

The answer (pages 40-41) denies these allegations except that it admits that affidavits were made as set out in said section 98, but denies that the affidavits correctly state the facts.

The bill avers (Section 100) that the defendants threaten to apply at future elections the unlawful rules applied at the 1921 elections and to continue in effect the regulations as having been entered into with persons representing the clerical and station employees and to continue to require that all subjects of dispute shall be

handled through these associations, and to continue to refuse to confer with the appellant as representatives of the employees or of its own membership.

The answer of the defendants (page 40), admits that the defendants propose to continue the application of the election rules, denies that they are unlawful and that the elections held are unlawful, and avers that the defendants had ample power to make such rules in accordance with conferences with its employees, adopted and approved by a large majority of the employees at elections subsequently conducted.

The bill then avers that the members of the appellant's organization have no adequate remedy at law, that multiplicity of suits would result from proceedings at law, that the said acts, which the defendants threaten to continue, are doing irreparable injury to the rights of the members of the appellant's organization and to the rights of the station and other employees established by Title III, and are destroying the remedy afforded them by said Title and are injuring the property rights of the appellant (Section 102).

Section 103 avers that unless the court grant the relief prayed for, there is danger that the defendants will succeed in their conspiracy and that the utilization of Title III will be defeated with regard to the clerical and station employees of the Pennsylvania System and the income of the appellant will be further reduced in large amounts.

The answer (page 40) denies the lack of remedy at law, irreparable injury or injury to the property rights of the appellant.

The prayer (Sections 106-14 of the Bill, pp. 30-33 inc.) seeks to restrain the defendants (1) from paying compensation to any officer or committeemen of the company associations and from paying any of their expenses and from paying for the publication or circulation of their by-laws and from permitting any officer of the system to

serve as a member of the regional committees of any of the associations; (2) also from controlling or attempting to control, through regional joint committees or otherwise, the designation of representatives by the clerical or station employees, and from continuing in effect election regions or districts or rules to govern any election for representatives and from regulating and from conducting or participating in the conduct of elections to determine such representatives, and from printing or distributing ballots and from paying for the printing or distribution of ballots, rules and regulations to govern such elections.

It is also prayed (3) that the court enjoin the defendants from permitting any officer or subordinate officer to coerce the clerical or station employees into accepting or signing for any ballots or voting at any election or into joining any such associations by threat of discharge or any other disadvantage in case of refusal to accept or sign for said ballots or to become members of said associations; (4) that the court enjoin the defendants from conferring or agreeing with the committeemen of these company these associations or any of them as the designated representatives of the body of clerical or station employees.

Paragraph 5 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the designated representative of the members of the appellant's organization, who are employees of the Pennsylvania Railroad, on any dispute in which they are directly interested and from omitting and refusing to decide such dispute in conference if possible.

Paragraph 6 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the designated representative of the clerical forces of the northwestern and of the southwestern regions in any dispute in which they are directly interested.

Paragraph 7 of the prayer seeks to enjoin the defendants from refusing and omitting to confer with the appellant as the representative of the station employees of the central, northwestern and southwestern regions.

The eighth paragraph of the prayer seeks to enjoin the defendants from representing that the "regulations" in effect for the government of clerical forces and other station forces had been agreed to on behalf of such forces and from publishing or circulating "regulations" wherein the words "for the employees" or the words "Committee representing clerical forces" or the "Committee representing office forces" or words of like import, stating that the said "regulations" have been agreed to by the said classes of employees through representatives, and requires the defendant corporation to cancel and expunge or to announce the cancellation of such words on all copies of said "regulations" within its control. The ninth paragraph of the prayer asks for general relief and for a permanent injunction.

The prayer is here set out in order to present more clearly the questions involved. Sufficient has been said to explain pars. 1-3 inc. Comments on pars. 4-8 inc. follow:

> "1. Paying compensation to any officer or committeeman of the Pennsylvania Railroad System Clerks' Associations or of the Miscellaneous Forces' Associations of the Operating Departments of the Eastern, Central, Northwestern and Southwestern Regions, of the System General Office and of the Altoona Works, for time occupied with the business of said Association or for time occupied with the business of representing employees of the Pennsylvania System, and from expending funds of the Pennsylvania Railroad Company or System to pay any expenses of any of said Associations or any expenses of any of their officers or committeemen,

or to pay for publication or circulation of any By-laws of said associations or of any proceedings thereof, and from permitting any officer of the Pennsylvania Railroad Company or System to serve as a member of the Joint Regional Committee of any of said associations.

"2. From controlling or attempting to control or to affect through regional joint committees or otherwise, the authorization or designation of representatives by the clerical or by the station employees (miscellaneous forces) of the Pennsylvania System to confer with the representatives of said System, and from establishing or continuing in effect election regions or districts or rules to govern any election for representatives of clerical or station employees (miscellaneous forces) of the Pennsylvania System and from regulating, conducting or participating in the conduct of elections to determine such representatives whether as members of regional joint committees of clerical or of miscellaneous forces associations or otherwise, and from printing or distributing ballots for such election and from paying with funds of the Pennsylvania Railroad Company or System for the printing or distribution of ballots, rules or regulations to control or govern the conduct of such election, except in such manner and to such extent as the Railroad Labor Board has decided or may hereafter decide to be just and reasonable.

"3. Permitting any officer or subordinate official of the Pennsylvania Railroad Company or System to coerce clerical or station employees (miscellaneous forces) into accepting or signing for any ballots for voting at any election for committeemen of clerical or miscellaneous forces' associations or into joining any such associations by threat of discharge or threat of any other disadvantage to said employees in case of their refusal to accept or sign for said ballots or to become members of said associations.

The record shows that the persons with whom the defendants now confer as representatives of employees are without title and that the practise of conferring with them obstructs the regulation of Congress (Title III); hence the fourth paragraph of the prayer seeks to enjoin the defendants from continuing to confer with these persons in that capacity as follows:

> "4. From conferring with or agreeing with the committeemen of said associations or any of them as the designated and authorized representatives of the body or class of clerical or of station employees (miscellaneous forces) of the System or of any region of the System or of any district of any region."

As the record shows that the appellant has been designated by the appellant's membership, employees of the Pennsylvania Railroad System, to represent them, the regulation of Congress imposes the duty on the defendants to confer with the appellant as the designated representatives of said members. Hence the fifth paragraph of the prayer seeks to enjoin the defendants from refusing to confer with the appellant as representatives of these employees as follows:

> "5. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania System, on any dispute in which said members are directly interested, and from omitting and refusing to decide such dispute in conference if possible."

The record shows that the clerical forces of at least the central, northwestern and southwestern regions of the Pennsylvania Railroad System have designated the appellant as their representative. Accordingly the sixth

paragraph of the prayer seeks to enjoin the defendants from refusing to confer with appellant as the representatives of these employees as follows:

> "6. From refusing and omitting to confer with the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the clerical forces of the Pennsylvania System or of the northwestern or of the southwestern regions on any dispute in which said clerical forces or any of them are directly interested, and from omitting and refusing to decide such disputes in such conference if possible."

The record also shows that the appellant has been designated as their representative by the station employees of the Pennsylvania System.

Hence the seventh paragraph of the prayer seeks to enjoin the defendants from refusing to confer with the appellant as the representative of these employees as follows:

> "7. From refusing and omitting to confer with the System Board of Adjustment of the Brotherhood of Railway Clerks as the designated and authorized representative of the station (miscellaneous forces) of the Pennsylvania System or of the central, northwestern or southwestern regions on any dispute in which said station or miscellaneous forces or any of them are directly interested and from omitting and refusing to decide such disputes in conference if possible."

The record shows that the defendants are representing, contrary to fact, that the regulations in effect for the government of clerical and station employees have been agreed to on behalf of such employees.

The eighth paragraph of the bill seeks to enjoin the defendants from so declaring and asks that they be required to cancel or to announce the cancellation of these misrepresentations.

II.

THE QUESTIONS INVOLVED.

The questions involved are:

(1) Does Title III of the Transportation Act regulate the employment status of officers and employees of interstate carriers by attaching to it the duties and correlative rights stated? (ante, pp. 3, 4, 5).
(2) Do the admitted practises of the defendants, (prayer 1, 2, 4, 8) sought to be enjoined unlawfully obstruct this regulation?
(3) If so, should a Federal court of equity at the suit of the complainant enjoin the continuance of these practises?
(4) Do the admitted (everything charged except coercion) acts and practises of defendants show a concerted purpose by defendants to obstruct utilization of Title III?
(5) If so is this purpose unlawful?
(6) If the purpose is unlawful, do practises (1, 2, 4, 8) sought to be enjoined further it?
(7) Should a Federal court enjoin said practises at the suit of appellant?
(8) Has appellant established also its right to the relief sought in sections (3, 5, 6, 7) of the prayer?

Remark. Of the factual basis of the bill (facts alleged as distinguished from inferences) only coercion is denied.

The right of appellant to the relief sought in paragraphs 1, 2, 4 and 8 rests upon the theory that the practises therein described are admitted and are unlawful both because subversive of Title III and because means to accomplish an unlawful object.

Coercion is denied—hence as to (3) there is the further question whether it has been made out.

The right of appellant to the relief sought in (5), (6), (7) depends upon the evidence of the appellant's title to represent the classes specified.

The Assignments of Error.

The questions stated are raised by the assignments of error to the decree of the Circuit Court of Appeals, as follows (Record, pp. 376-380, inc.):

"The Circuit Court of Appeals erred:

FIRST: In holding and deciding that the relief prayed for in the bill should have been denied and in affirming the decree of the District Court dismissing the bill.

SECOND: In holding and deciding that the Act of Congress of February 28, 1920, known as the Transportation Act of 1920, Title III thereof, conferred on the employees of the Pennsylvania Railroad Company no new rights of the kind in issue in this cause.

THIRD: In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate carriers the right to avail themselves of the machinery and procedure provided by the said Act for the settlement of disputes between employers and employees and for the attainment of just and reasonable wages and working conditions.

FOURTH: In not holding and deciding that Title III of the Transportation Act of 1920 confers on the employees of interstate commerce the right to avail themselves of the procedure and machinery set up by the said Act without molestation, interference, oppression, coercion and intimidation from their employers and confers reciprocal rights to the employers.

FIFTH: In not holding and deciding that Title III of the Transportation Act of 1920 confers on employees of interstate carriers the right to be properly represented in conferences, proceedings preliminary to hearing before the United States Railroad Labor Board, and any other procedure

under the said Title III, and to have their true will ascertained in this regard without molestation, interference, oppression, coercion or intimidation from their employers.

SIXTH: In not holding and deciding that Title III of the Transportation Act of 1920 makes it unlawful for the management of interstate carriers to coerce the employees into abandoning the right to avail themselves of the machinery provided by the said Act for the settlement of disputes, or in any manner whatsoever to thwart the true will of the employees in this regard, or in any manner whatsoever to hinder, obstruct or impede the said employees in their procedure under and pursuant to the said act.

SEVENTH: In not holding, deciding and adjudging that the appellees had combined and conspired to obstruct, defeat and render unavailing to the employees represented by appellant the method for settling disputes between the said employees and the management of the Pennsylvania Railroad System provided by Title III of the Transportation Act of 1920, the remedy of the said employees for unjust and unreasonable wages and working conditions afforded by said Title III, and the procedure and machinery set up by said Title III to attain said remedy.

EIGHTH: In not holding, deciding and adjudging that the appellees had combined and conspired by concerted action to injure, oppress, threaten and intimidate said employees in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act of 1920.

NINTH: In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the rights established in said employees by said Title III to designate and authorize an organization of employees as their representative to confer with officers of the car-

rier as provided by Section 301 of the said Title III.

TENTH: In not holding, deciding and adjudging that the appellees had conspired and combined to defeat the exercise of the right established in the said employees by said Title III to designate and authorize as their representative to confer with the representatives of the carrier, and to refer undecided disputes to the Railroad Labor Board, pursuant to Sections 301 and 307 of said Title III, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or its System Board of Adjustment.

ELEVENTH: In not holding, deciding and adjudging that the appellees had combined and conspired to impede, obstruct and hinder the said employees in the utilization of Title III of the Transportation Act of 1920 by the following means and methods:

a: By dividing said employees into regions and districts and requiring such employees to designate at an election persons employed in each district as representatives of the employees of such district, the rule of election to provide that the individual receiving the highest vote be considered elected although voted for by only a small minority of those voting in such district, and although the choice of the majority should be an organization of employees; the effect and object of said division being to prevent said employees from arriving at a common position and from proceeding in a collective, co-ordinated, systematic, orderly and unified manner toward the formulation and development of a dispute and toward its settlement pursuant to the procedure, remedy and rights afforded by Title III.

b: By entering into, with individuals elected as representatives of 'Regions' as aforesaid, regional regulations purporting to be agreed to

on behalf of the body of clerical and station employees; by establishing, by agreement with the said individuals, new regional and other associations of employees, which said associations should have no provisions for dues to be paid by their members, but should be controlled by appellees and supported by funds of the Pennsylvania Railroad Company or System; by constituting the said associations the exclusive representatives of the body of clerical and station employees in conference under Title III or otherwise; the object and effect of all of the foregoing acts being to establish such wages and working conditions as the appellees should see fit, free from utilization by said employees of the remedy and procedure afforded by Title III, and free from the danger of a decision of the Labor Board adverse to appellees' position and from the obloquy of public opinion attendant upon refusal to obey such decision.

"TWELFTH: In not deciding, holding and adjudging that the appellees had combined and conspired to hinder, impede and defeat the utilization by employees represented by appellant of Title III of the Transportation Act of 1920, by establishing, by agreement with representatives of minorities elected as set forth in the preceding assignment of error, 'by-laws' providing for the exclusive procedure for the adjustment of controversies between the said employees and the management; the said 'by-laws' further providing for the establishment of joint regional committees to be made up of an equal number of the officers of the Company and the purported representatives of employees, with power finally to decide controversies between the employees and the management; the said 'by-laws' further providing that the employees and the management should have equal voting power in such regional committees and that not less than two-thirds should be necessary to reach a decision; the effect and object of said 'by-laws', joint regional committees and procedure for settlement of controversies being

to limit controversies to individual grievance cases, to prevent the initiation of general wage or working condition movements, to prevent reference of any controversy to the United States Labor Board unless the management should be willing to have it so referred, and otherwise to block access by said employees to the remedy afforded by Title III of the Transportation Act of 1920.

THIRTEENTH: In not holding, deciding and adjudging that the appellees, in pursuance of the unlawful conspiracy set forth in Assignments of Error numbered 'SEVENTH' to 'TWELFTH' have proceeded and are continuing to proceed toward the accomplishment of the several objects of the said conspiracy specified in the said Assignment of Errors, and have oppressed, injured, threatened and intimidated and are continuing to oppress, injure, threaten and intimidate the employees represented by appellant, citizens of the United States, in the free exercise and enjoyment of the rights and privileges secured to them by Title III of the Transportation Act, and have obstructed, impeded and hindered, and are continuing to obstruct, impede and hinder the said employees in the utilization of the remedy and procedure afforded to them by said Title III, and have rendered and are continuing to render the said remedy and procedure unavailing to the said employees and have blocked and are continuing to block the access of the said employees to the said remedy and procedure. * * *

"EIGHTEENTH: In holding and deciding that the acts charged in the bill against the appellees were conduct which was not unlawful either in purpose or in means to carry out the purpose."

The foregoing assignments of errors are in effect included in the first assignment, that the Circuit Court of Appeals erred in affirming the decree of the District Court dismissing the bill. The argument will be based, therefore, on that assignment.

III.

THE COURTS BELOW ERRED IN DISMISSING THE BILL. ARGUMENT.

A. Statement of the Situation and Analysis of the Evidence.

The following recital of the events leading up to the institution of the practises sought to be enjoined and to the conduct of defendants submitted to be unlawful is deemed necessary to show the purposes of the defendant and the legal effect of their acts and of these practises.

It is based upon public documents and is submitted as a part of the history of the times.

Prior to Federal control (January 1, 1918) it was the policy of the Pennsylvania Railroad System to enter into no agreements with any organization of its employees, except the train and engine service brotherhoods and the employees of this System, with the exception stated, were then in general unorganized.

During Federal control it was the policy of the Railroad Administration to encourage organization of employees and to enter into collective agreements with them. Among others, great numbers of employees of the Pennsylvania Railroad System became members of the so-called Standard Employees organizations. From time to time, the Director General entered into formal contracts called "National Agreements" with these organizations as representatives of the several classes of employees, members and non-members of their organizations. These "National Agreements" classified the positions in the service, defined the work of each class and prescribed the duties, rights and wage rates of the incumbents. These "National Agreements" were applied to the positions in the service of the Pennsylvania Railroad System as well as to other railroads under Federal control. Among them was that entered into in January

1920 between the Director General of railroads and the Brotherhood of Railway Clerks. This covered wage rates and working conditions of the clerical and station employees, freight handlers, and the like, of the several railroad systems in the United States, including the Pennsylvania Railroad System.

While the Brotherhood of Railroad Clerks was and is a national organization having membership throughout the United States, it was and is organized also according to railroad systems. For example, the members of the Brotherhood of Railway Clerks, employees of the Pennsylvania Railroad System, are members also of the System Board of Adjustment of the Brotherhood of Railway Clerks, the local organization having its own constitution and by-laws and self determination in matters concerning the relation of its members with the Pennsylvania Railroad System. With these relations the national organization may not concern itself unless invited to do so by the local association. (Excerpts from the local and national constitutions and by-laws showing this autonomy exhibited in the Record, pp. 42-69. Board of Adjustment Membership, p. 65. Protective Committees, pp. 54, 55, 56, 57.)

When possession of the Pennsylvania Railroad System was returned to its owners and management on March 1, 1920, the management found employer-employee relations largely fixed and determined by the national agreements. They also found the system organizations such as the System Board of Adjustment of the Brotherhood of Clerks acting as representatives of the employees of the several classes.

This situation was not in accord with the labor policy of the management prior to Federal control and immediately the management set themselves to restore the situation, so far as might be, to pre Federal-control conditions.

Section 312 of the Transportation Act prohibited any change in wage rates or working conditions during the guarantee period from March 1, 1920 to September 1, 1920. Furthermore, the entire matter of wage rates and working rules for Pennsylvania System employees, among others, had been referred on April 15, 1920 to the Railroad Labor Board for its decision. Effective July 20, 1920 the Labor Board had decided the wage portion of the dispute, but had continued the National Agreements in effect as a *modus vivendi* until it could hear evidence with regard to the reasonableness of the rules embodied in them. On January 31, 1921 the defendant Atterbury, as Chairman of the Labor Committee of the Association of Railroad Executives, presented to the Labor Board a formal demand on behalf of that association that the Board remand the rules dispute to the several railroads for negotiation and agreement between the several railroad managements and its employees. On April 15, 1920 (Decision 119) the Board decided to terminate on July 1, 1921 the *modus vivendi* declared by Decision 2, subject to certain conditions. In order to provide new or modified rules in substitution for the rules embodied in the National Agreements, the Board by its Decision 119 called upon the officers and upon the system organizations of employees of the several railroad systems to meet and confer and to endeavor to agree upon what these rules should be. Up to this time the Pennsylvania Management had continued to apply the rules of the National Agreements to positions in the service of the Pennsylvania Railroad System.

The words of Decision 119 "System organizations of employees, parties to the dispute" pointed to the Pennsylvania System Board of Adjustment of the Brotherhood of Railway Clerks (appellant herein) as the organization entitled to confer with the representatives of this carrier with regard to rules for its clerical

and station employees. The decision directed the Pennsylvania Railroad System officers to confer with, and, if possible, to make collective agreements through this organization as the representative of employees concerned. If agreement could not be arrived at as to any subject matter, the parties were again to refer such subject matter to the Board for decision.

Decision 119 confronted the Pennsylvania Management with the necessity of either making collective agreements with the appellant organization and with the Federated Shop Crafts System Federation No. 90, as representatives of the clerks, station employees and shopmen, or of disobeying the decision and exposing the management to outlawry by the Labor Board and to the charge of bad faith in view of the demand of January 1921. The management endeavored to avoid these results by contending that the Board had no jurisdiction to decide who should represent employees and that Decision 119, insofar as it required them to negotiate with the System Board of Adjustment, was invalid (See Pennsylvania Railroad *v.* Railroad Labor Board, 261 U. S., p. 72).

Accordingly, the management in 1921 brought injunction proceedings against the Board to restrain it from publishing a finding that the Pennsylvania Railroad System was in disobedience of its decision (No. 218). This injunction proceeding was decided by this court in February, 1923. This court ordered the injunction dissolved and the bill dismissed. During its progress the employees of the Pennsylvania System were in doubt as to the meaning and effect of Title III. The Supreme Court decided that the Labor Board was within its powers in passing upon the title of representatives but made it clear that there was no penal sanction to enforce decisions of the Board.

The Institution of the Practices Sought to be Enjoined.

At the same time (May 1921) that the defendants determined to contend that the Board had no jurisdiction to decide the title of representatives, they determined also to establish a plan whereby clerical, station and shop employees would be prevented from selecting their own representatives, and from utilizing Title III procedure. The method adopted and applied was to restrict the right of the employees of these classes to name their own representatives and specifically to restrict them from naming an organization of employees. It also set up election districts and regions within each of which the employees were required to select three representatives, who were required to be employees in active service in that district.

This plan of the defendants is submitted to be an illegal conspiracy for the reason that its purpose and effect was the obstruction of Title III (a regulation of the employment status of officers and employees of interstate carriers) and the obstruction of employees' utilization of Title III procedure and of the exercise of Title III rights, such purpose being unlawful.

The means instituted to accomplish this illegal object (the practises sought to be enjoined) are also illegal.

The conspiracy of the defendants is described in Sections 39-44 of the bill. The object stated was to be furthered and is being furthered by the practises sought to be enjoined.

Nature of Proof.

The proof of this conspiracy consists of the averments of the bill, the admissions of the answer and the exhibits submitted in support of the bill.

The averments of fact of the bill are admitted; only the inferences drawn from these facts are denied.

The bill charges as overt acts and as means in fur-

therance of the objects of the conspiracy the following acts and practises of the defendant:

The publication of the plan with misrepresentations as to its purposes and effect on May 24, 1921 (Ex. "E", Record, p. 70).

The formulation by defendants of rules for the election of representatives by the employees with the stated restrictions on choice.

The holding of the election under the rules stated and the investiture by defendants of persons as "representatives" of employees who were not entitled to that character.

The execution of regulations governing working rules by agreement with these purported representatives and publication of these "regulations" as having been agreed to by representatives of the employees concerned (Clerks' regulations, Record, Ex. "I", p. 88; Station employee regulations, Record, Ex. "J", p. 129).

The establishment and maintenance of regional associations of employees, supported by funds of the Pennsylvania Railroad System, with by-laws as stated (Ex. "L", Record, p. 232).

Conferring with the committeemen of these associations as representatives of clerical and station employees.

Refusal of defendants to confer with the appellant as representative of its own members, employees of the system or as representative of clerical employees of the System, or of clerical employees of the northwestern or of southwestern regions or of station employees of the System or of the central, northwestern and southwestern regions.

Continued participation of officers of defendants in the regional joint committees of the associations, the committees controlling the election rules and the conduct of the associations.

Coercion by officers of the Pennsylvania Railroad System of employees into becoming members of these associations (denied by answer, but supported by affidavits set out in the Record, pp. 108-44).

The answer admits all these acts and practises, except the last.

The development also of the conspiracy is shown by the bill, by the admissions of the answer and by the documents filed as exhibits.

DISCUSSION OF DOCUMENTS IN EVIDENCE SHOWING DEVELOPMENT OF CONSPIRACY.

The Announcement of May, 1921.

The announcement of May 24, 1921 (Record, pages 70-76) is the first overt act. In this announcement, the defendant Atterbury purports to outline the "plan". After stating parts of decision 119 of the Railroad Labor Board, he says (page 74):

> "The railroads are asked to confer with representatives of different classes of employees with a view to establishing proper rules and regulations. This is precisely what the management of the Pennsylvania Railroad has desired. The employees have the right to select the representatives from among their own number. Detailed conditions, designed solely to secure an accurate expression of the desire of the employees under which representatives will be chosen will be announced later. The men thus selected will be recognized by the management as empowered to speak for the men by whom they are chosen. * * * This plan, of course, will not be put into effect for men in engine or train service. All controversial questions affecting these men are now settled by the Joint Reviewing Committee and it is earnestly desired to establish a similar method for settling controversial questions affecting employees in all other branches of the service."

The Joint Reviewing Committee, referred to by the defendant Atterbury, was set up by the agreement entered into in December 1920, by the Pennsylvania man-

agement with the four Brotherhoods of train and engine service employees. This agreement is set out in the record, pages 245-253. The Joint Reviewing Committee is described and its powers stated in sections 18-20-25. The agreement governs the method of handling questions between the Pennsylvania System management and its employees in engine and train service. Divisional, regional and systemal handling of controversies is provided for. It is signed for the employees by the General Chairmen of the organizations of employees concerned and for the railroad by the General Managers of each region. This document is submitted as one of the surrounding circumstances and as an example of a bona fide collective agreement entered into by the defendant managers with organizations of its employees. If this agreement is compared with the regulation for clerical and station employees and the associations of clerical and station employees and the method of handling their disputes later set up by the defendants, the difference between the bona fide and the pseudo agreements and organizations will appear in strong light.

The defendant Atterbury states it was "earnestly desired" by the management to establish a "similar method" for settling controversial questions affecting employees in all other branches of the service, but, it is submitted, this was mere gesture. The employees certainly had the same desire, yet there emc[illegible]ed not a similar method but a method as dissimilar as bread and a stone.

The Rules of Election.

After the announcement of May 24, 1921 rules in fulfillment of the promise of rules "designed solely to secure an accurate expression of the desires of employees" were promulgated. (These rules are described in the Bill, section 66). These averments are admitted

by the answer. How "solely designed, etc." will appear from a consideration of their effect.

By these rules the general office forces at Philadelphia and Pittsburgh were segregated from the rest of the clerical employees and divided into six departments, each of which was to elect a committee of three representatives (actively employed in the department). The remainder of the employees were segregated into divisions comprised into four operating regions, the eastern, central, northwestern and southwestern and the Altoona Works. Employees of each division were to designate three representatives actively employed to speak and act for employees of the division. The chairmen of the division committees were to become members of a general committee to speak for employees of the region. There was no provision for systemal representation.

Illegality of Election Rules.

It is submitted that these rules were illegal restrictions on freedom of choice by employees, were obviously not designed to secure an accurate expression of the desires of employees but really to frustrate these desires, that the announcement was in bad faith and intended to conceal its object which was to prevent utilization of Title III by employees.

If railroad officials may legally limit the designation of representatives by employees to the extent of preventing them from designating an organization, they may limit the choice so as to prevent any effective representation. They may require that the representatives be blind, deaf or dumb or not more than 12 years of age. The precluding of organizations destroys the only convenient and practical and the accustomed method for representation of employees. Such representation had always been conducted by a committee of an employee organization the names of the members of which were usually

unknown to the employees concerned. The committee had acquired experience in negotiation, and had in its possession valuable data bearing on the question of the reasonableness of wage rates and usages. When employees are deprived of the services of such committees and compelled to depend upon personal representatives not equipped in the technique of representation, the interests of the employees must suffer. The denial of organization representation is obstructive of a valuable right which affects, financially, wages and usages of employees. If personal representatives must be chosen, unsupported by an organization and otherwise unequipped, the carrier, which is free to choose what counsel it pleases to represent it, and able to supply its counsel with adequate financial support and data has an overmastering advantage. The result is that the employees' position will not be adequately represented in conference, reference to the Labor Board may be defeated or if made the employees' position will not be presented adequately, with the result that unjust and unreasonable wage rates or rules will remain in effect.

To deprive the employees concerned of the right to choose an organization was to deprive them of leadership and indeed of all opportunity to function effectively.

Obstruction by an employing carrier of freedom of choice of representatives by employees impairs the very basis of Title III.

The establishment of voting districts, segregating and subdividing the employees was also unlawful. It has the effect of preventing effective action.

The districting by the defendants of the employees for the purpose of voting was also illegal. Its obvious purpose was to cut the body of employees into small fragments so as to hinder collective action of the whole body.

It is submitted further that the employing carrier is without legal right to determine the method whereby em-

ployees may select representatives. The statute contemplates and requires free selection by employes in whatever manner they see fit.

Description of elections and proceedings resulting from it.

The defendants proceeded on May 29, 1921 to hold the election planned. It was held during proceedings before the Labor Board in which its legality was challenged (See Labor Board Decision 220). This alteration of the *status quo* was itself illegal and in violation of the duty imposed by Title III to maintain the *status quo* until the Labor Board should decide the dispute.

Nevertheless, the defendants held this election (illegal for all these reasons) in the manner and with the results stated in the bill and admitted by the answer. (Exhibit G, Record, pp. 77-87, shows the vote by classes in the several regions. The vote by clerks and station employees appears on page 82.) The bill shows the details of the election in a number of characteristic districts. The defendants declared designated as employees' repsentatives the three individuals who received the highest number of votes in the district, although they may have received as few votes as 5 out of 172 or 94 out of 150 or 151 out of 1,345 or 19 out of 305 or 28 out of 416, as was the case in the districts specified by the bill. Furthermore, the record show with regard to the regional vote on the clerks ballot, that in the northwestern region 1,911 out of 1,934 voted for the appellant as representative and in the southwestern region 1,374 out of 1,820. The regional vote on the station employees' ballot was, in the northwestern region 837 votes out of 1,071 for appellant and in the southwestern region 566 votes out of 665, and in the central region 900 out of 1,257. Despite this expressed desire on the part of these majorities that the appellant should act as their representatives, the defendants declared designated as representatives the three

individuals who received pluralities in each district of no matter how few votes. These three district "representatives" then elected chairmen. These chairmen were constituted into so-called "General Committees" and with these "General Committees" the defendants entered into so-called "Agreements" or "Regulations" which they published as made with the employees (see bill, sec. 79). Copy of "Regulations", effective 1921, was offered in evidence as Exhibit BB, but in order to reduce the record was not printed. Exhibits I and J, effective 1923, are practically identical with the 1921 "Regulations". The committee signing for employees signs as "General Committee Representing Clerical Forces under Jurisdiction of the General and Division Superintendents Eastern Region, Pennsylvania System."

Sham "Associations of Employees" established.

The next step of the defendants to obstruct the Congressional regulation (Title III) was the establishment by defendants in connivance with these pseudo representatives, of clerks' and station employees' associations. Characteristic Bylaws are shown in Exhibit L (Record, pp. 232-243), Bylaws of the Pennsylvania System Clerks' Association, Operating Department, Eastern Region, effective August 1, 1921. These "Bylaws are agreed to on behalf of the defendants by the defendant Krick and "For the Employees" by twenty-one persons described as "General Committee Representing Clerical Forces under the Jurisdiction of General and Division Superintendents, Eastern Region, Pennsylvania System." This document is entitled "Memorandum of understanding covering method to be followed in the handling of questions between the Pennsylvania System Management, Eastern Region and its employees in the clerical forces." This title is doubtless based upon the title of the agreement between the management and the employees in engine and train service (Record, p. 245). The court will

notice (See Record, p. 234) that in addition to governing the method to be followed in the handling of questions, etc. the document also purports to be the constitution and bylaws of an employees' organization.

These bylaws show on their face that the association is a sham. It is without dues or means of self support. No provision is made for meetings of the membership. All these associations (one for each region for the clerks and one for the station employees) are controlled by the Regional Joint Committee thereof which is controlled by the officers of the Pennsylvania Railroad System. This committee fixes the rules governing the nomination and election of representatives (Article 4, Section 3). The election rules put in effect in 1921 cannot be changed except with the consent of the management. No amendments to the constitution and bylaws of this association can be made except with the consent of the management (Article 6, Sections 1-3). Article IX (p. 246) governs procedure for adjustment. It requires joint submission. If employee and management representatives cannot agree, no step can be taken. Unless the management—members on the Regional Joint Committees—consent, no dispute can be referred to the Railroad Labor Board.

Similar associations governed by similar constitutions and bylaws were established about the same time and in the same manner, covering the other regions of the Pennsylvania Railroad System.

The 1923 constitutions and bylaws of these associations, now in effect, are practically identical with those of 1921. (As to Clerks', see Ex. "I", p. 113, power over amendments by Regional Joint Committee, Art. 13, Sec. 1; control of election rules, Art. 4, Sec. 3. As to Station employees, Ex. "J", p. 149; power of Regional Joint Committee over amendments, Article 12, Sec. 1; election rules, Art. 4, Sec. 3; see also, as to clerical employees, Ex. MM, Central Region, Clerical Employees' Associa-

tion.) The draftsman of this last document has not taken the trouble to define the composition of the Regional Joint Committee, except as to the employee members. By implication the company members are to be officers of the company. In this association the General Committee may amend the bylaws by a two-thirds vote (Art. 9, page 317). The Regional Joint Committee, however, controls nominations and elections (See Art. 4, Sec. 3) (See also, Ex. "RR").

It is submitted that these associations are hollow and transparent shams; marionettes pulled and jerked as the management draws the strings. The pretense that they express or can act to accomplish employees' desires is utterly hypocritical. They are instrumentalities established and maintained by defendants to accomplish their unlawful purposes.

Application of August 31st, 1921.

On August 31, 1921 the Pennsylvania Railroad Company made application to the Labor Board (Record, p. 303) to vacate its Decision No. 218 (holding the election of May 29, 1921, null and void). This application is submitted as a surrounding circumstance which tends to illuminate the acts of the defendants and to show their true character. It is submitted also to show misrepresentation by the defendants as to their "plan" and thus as indicia of the illegality of the conspiracy. This application was circulated in thousands of copies. Attention is invited to the statement on page 307:

> "Paragraph 5. * * * It was determined that all classes of employees should have a voice in the administration of matters affecting their welfare through representatives of their own selection, and that such representatives, whether union or non-union men, should be actual employees. In pursuance of this policy conferences were held with representatives duly authorized and designated by the employees in the several crafts.

> There are in the service of the carrier approximateiy 176,000 employees who are interested in and affected by rules covering working conditions and 117,176 or 66 5/10% of said employees have by vote or otherwise, as a result of said conferences, expressed a desire to negotiate rules and working conditions through employee representatives. Accordingly contracts respecting rules and working conditions have been entered into between the carrier and representatives of 149,918 employees, apportioned among the several classes, as follows: * * *
>
> "Clerks and other office, station, storehouse, warehouse and elevator forces, including engine and train crew callers.....39,958."

The record shows that nothing like 39,598 clerks and station employees expressed a desire to negotiate as stated. Altogether 18,692 clerks voted at the election and 6,202 station employees; the voting employees of these two classes aggregate only 24,894. It is only the votes for individuals which can, with any logic whatever, be considered, an expression of desire to negotiate through the representatives designated by defendants. Only 12,502 voted for individuals. How these ballots would have been cast if employees had been free to vote for an organization can only be surmised, but certainly only those ballots cast for individuals should under any theory be considered an expression of approval for defendants' plan. As to the station employees, 13,156 were held by the defendants eligible to vote; 6,202 voted; 2,545 voted for individuals; 3,102 voted for the appellant. Hence not more than 12,502 plus 2,545 or about 15,000 could be held to have approved the defendants "Plan."

The "contracts", referred to by the defendant Rea as having been entered into by the representatives of approximately 39,000 employees, were entered into (stretching the facts as far as possible to support Mr. Rea's statement) by the representatives of about 15,000. Even this assumes that all the persons who voted for individuals

would have voted for individuals just the same if they had been free to vote for an organization—an assumption of extreme violence.

The "contracts" are the "regulations" put in effect by the defendants. They were entered into by the "representatives of employees" who emerged from the illegal machinery set up by defendants and who were without title to that character.

Statement of September 25, 1921.

Further to show the surrounding circumstances and misrepresentation, the defendants' statement of September 25, 1921, is submitted (Record, p. 269). In this statement, which was broadcasted by thousands of copies, the defendant Rea reiterates the disingenuous statements made in the application referred to above (Record, p. 271).

"Speaking for 80,000."

The pamphlet entitled "Speaking for 80,000" of August 22, 1921, is also submitted to show surrounding circumstances and misrepresentations by defendant Atterbury and as one of the means applied by the defendants to promote the object of the conspiracy. The so-called representatives elected in May 1921 were ordered by defendants to attend this meeting; also the committees of System Federation No. 90 and the committees of the appellant's organization. The System Federation No. 90 Committee did not appear. The defendant Atterbury said (Record, page 278):

> "There are represented in this room, then, the representatives of about 80,000 of our employees who have been elected by the company ballot. * * * Now with those 80,000 men we have made agreements * * *. We have made an agreement with 35,000 of our clerical and station employees on the railroad. Are we going back on those 35,000 men? No, we are not."

(Page 281)

> "* * * The trainmen have organized Joint Boards of Adjustment or the Joint Reviewing Committee. These Joint Reviewing Committees are now in process of formation for * * * clerical forces * * *. On these reviewing boards are representatives of the railroad and representatives of the employees."

It is submitted that these statements misrepresented the facts and were made and circulated in order to further the object of the conspiracy by deceiving the employees and the public as to its true nature.

The statements that contracts had been made with 35,000 of the clerical employees and that Joint Reviewing Committees for the clerks were the same as those for the trainmen were untrue.

Election Instructions of May, 1922.

Further, to show the development of the conspiracy the election instructions of May, 1922 are submitted (Record, pp. 282). Attention is invited to page 283:

> "Shall the employee's receipt be taken for the ballot and how? A. Yes, in writing. On election rolls as per sample page B."

The "election roll" referred to is headed as follows:

> "We, the undersigned, members of this association, have received the sealed envelope", etc.

By signing this election roll the persons signing it acknowledge themselves to be members of the association. Although by the by-laws of the association all clerical employees were entitled to vote, whether members or nonmembers, yet under these instructions only members of the associations were entitled to receive ballots. Subordinate officials made it their business to see that all clerical

and station employees became members of the association by threatening discharge if they did not sign this acknowledgment of membership. This coercion is shown by the affidavits set out in Exhibit "K", Record, pp. 208-210, 220-221-230. The signatures of these election rolls are aggregated and are claimed by the defendants to show that the persons signing the election roll approve their so-called plan of representation.

The effect of the instructions is that an employee must become a member of the association to vote. Unless he votes he is denied any form of representation recognized by the management. If he votes he becomes a member of the association and thus is held to approve the plan. Yet these associations are mere creatures of the management, supported, maintained and controlled by it.

Document of March 24, 1922.

Further, to show that the defendants provide these associations with offices and issue propaganda on their behalf, a document is submitted (Ex. "AA", Record, p. 284), dated March 24, 1922, signed by C. B. Althouse, Regional Chairman Miscellaneous Forces. This document is issued from Room 137, Pennsylvania Station, New York. The association, of course, has no funds to pay rent and is furnished this office at the expense of the Pennsylvania Railroad System.

Cleave letter.

The appellant has also submitted a letter dated Harrisburg, Pa., dated May 8, 1922, addressed to Joseph Brown, Train Master, Harrisburg, and signed by E. J. Cleave, Superintendent (Exhibit "DD", Record, p. 288). It shows the Pennsylvania Railroad management supplying the ballots, envelopes, instructions for the election, and directing that ballots must be receipted for on election rolls and that a record must be kept of employees refusing to receive ballots. This direction to record re-

fusals, no doubt, was to secure a record of recalcitrants for purposes of coercion.

The circular of April, 1922 is submitted to show due diligence on appellant's part (Record, p. 286).

L. B. Decision No. 1833.

The Labor Board's decision No. 1833 June 23, 1923, is submitted to show surrounding circumstances and as a part of the history of the times. (See Record, page 330). In this decision the Labor Board published its finding that the Pennsylvania Railroad System was in contempt of its former decision (218).

L. B. Docket 405.

The appellant also submits Exhibit "K" Docket 405 of the Railroad Labor Board, showing the proceedings which resulted in Decision 1833. This is submitted to show misrepresentation by the defendants concerning the "plan" and as constituting means to further the accomplishment of the object of this conspiracy to prevent the utilization of Title III by employees. At page 165 the defendant Rea states that this court by the decision in Pennsylvania Railroad *v.* Railroad Labor Board in effect approved of the "Plan". He then states (Record, page 166):

> "The cardinal points of this plan of employee representations are that:
>
> (a) The employees' representatives must be individuals.
> (b) They must be bona fide employees of the company.
> (c) They must be selected by secret ballot.
> (d) They cannot be labor organizations as such."

As to "(a)" the court's attention is invited to the "Memorandum covering method of handling questions between management and employees in engine and train

service" (Record, p. 245). It is signed for the employees by the General Chairmen of the several organizations concerned as such (p. 253).

As to election by secret ballot: These General Chairmen were not elected by secret ballot but were designated by their organizations.

Leo. I. Kennedy.

As to the general good faith of the defendants "Plan", the court's attention is invited to their dealings with one Leo. I. Kennedy, first as General chairman of the United Brotherhood Maintenance of Way Workers in August, 1921, see Exhibit O, p. 254. This exhibit is an agreement, signed (Aug. 15, 1921) "For the Employees, Leo I. Kennedy, General Chairman, U. B. of M. W. E. & R. S. L.," (United Brotherhood of Maintenance Way Employees and Railroad Shop Laborers) (page 261). Kennedy was elected on June 2, 1921 as representative of these employees voting for him under that designation. Later, sometime prior to Jan. 1, 1922 (See Exhibit "SS", Labor Board decision 1827 Record, page 323) the defendants without terminating this agreement under its termination clause, made another agreement concerning the same subject with Kennedy as General Chairman of the "Pennsylvania System Fraternity". This was done although Kennedy was selected as representative of the U. B. of M. W. E. & R. S. L. by secret ballot and was so recognized by the defendants and without any evidence that the employees wished to act through the "System Fraternity" and not through the first named organization.

It is submitted that these decisions of the Labor Board are a finding of the facts set out by a tribunal empowered to find the facts and are prima facie evidence of the facts found and that they show misrepresentation and legal fraud on the part of the defendants with regard to this so-called "Plan of Representation".

Development of Conspiracy in 1923.

Further misrepresentations were made in the circular of defendant Rea, dated June 28, 1923 (Exhibit U.U., Record, 338).

Bulletin dated April 9, 1923, Miscellaneous Forces Association, Exhibit "JJ", Record 298, is submitted to show propaganda for these sham employee associations issued at the expense of the Pennsylvania Railroad System.

To show the development of the conspiracy and the method whereby the employees are brought to "ratify" the plan, election instructions are submitted, dated May, 1923, Record page 296, Exhibit "II". (Signing the election roll has the effect of a declaration of membership in the association.)

Also election instructions, Miscellaneous Forces, May, 1923, to the same effect (Exhibit "RR", Record, p. 320-1). Further, to show misrepresentation, appellant submits:

Exhibit "OO", (Record, p. 319), letter of May 18, 1923 from defendant Rea to Secretary of Railroad Labor Board. Mr. Rea says:

> "The clerical and miscellaneous forces of the Pennsylvania Railroad System whom the Brotherhood of Railway and Steamship Clerks claim the right to represent, adopted the plan of employee representation and elected by secret ballot the employes they desired to represent them."

B. Proof Shows That Practises Sought to be Enjoined Do Obstruct the Regulation of Congress.

The bill, answer and exhibits constitute the proof of the conspiracy charged and of the acts and practices instituted and maintained by the defendants and alleged to be unlawful and sought to be enjoined.

The proof shows that the defendant management on April 15, 1921 was called upon by the Labor Board to

meet with the appellant as representative of the clerical and station employees and to endeavor to agree with it upon working rules in substitution of the rules of the National Agreements.

The policy of the management was opposed to agreements with organizations of employees, except with regard to the train and engine service organization.

Accordingly, the management instituted its own machinery for the designation of representatives by employees, so designing it that there would emerge "representatives" without experience or support and pliant to the defendants' wishes. In order, also, that the employees might be further obstructed from utilization of Title III, the managements' plan provided for the establishment of purported employee organizations to be controlled by the management and the recognition of these puppet employee organizations as the sole representatives of the employees. The object of the plan was to enable the management to evade performance of its obligations under Title III and to evade conferring with representatives of employees and so to evade possibly adverse Labor Board decisions and adverse public opinion engendered by such decisions. The object, in brief, was to obstruct and hinder collective processes of employees whether for Title III purposes or otherwise. The practises sought to be enjoined are among the means applied to effectuate these objects.

The Labor Board found these agreements void (Rec. 218) and attempted to find the defendants in contempt but were restrained by injunction proceedings instituted by the defendants. While this action was before the courts defendants consolidated their position. Company associations of employees were established by defendants by agreement with the purported representatives. These company associations have no resources except such as are supplied by the Pennsylvania Railroad Sys-

tem. Their committeemen are paid by the Railroad System for association work. Offices are supplied and all expenses paid by the said System. These associations have no dues or other means of self support. Yet they are exclusively recognized and dealt with by the defendants as the only instrumentality through which employees may express themselves to the management. Defendants will confer with no other organization with regard to desires of employees of these classes. By the by-laws of these associations, joint committees are established which control their functioning. Officers of the Pennsylvania Railroad System make up one-half of the membership of these joint committees. No action can be taken except by a two-thirds vote. Thus the officers of the Pennsylvania Railroad System are enabled to control the action of the associations and are enabled to prevent reference of an undecided dispute to the Labor Board. The object of the defendants has been accomplished. Access by employees to the remedy and procedure provided by Title III is completely obstructed. The regulation by Congress has been set at naught and defied.

The defendants repudiate their obligation to perform the duties imposed by it, refuse to perform them, and violate the correlative rights. They assert their own right to maintain a method to settle disputes subversive of the method imposed by Congress. Specifically, the defendants continuously interfere with the designation of representatives by employees, invest as representatives persons without title, confer and make agreements with these pseudo representatives, place in effect these agreements as binding upon the employees and maintain sham associations of employees, instrumentalities of obstruction, control and support them, establishing also such by-laws for them as enable defendants to prevent references to the Labor Board.

C. A Federal Court of Equity at the Suit of the Appellant May Enjoin the Practises Complained of—

Because these practises are means to further an unlawful purpose.

It is submitted that the evidence (bill, answer and exhibits) shows the defendants did, as charged, enter into a plan, combination or conspiracy having the illegal object stated, the obstruction of the Congressional regulation of the employer-employee status (Title III) by preventing utilization by employees of its procedure. The evidence also shows that machinery, policies and practices were instituted and are now being continued in effect by defendants as means to accomplish this object. As the object was and is illegal, being subversive of this regulation and of rights granted to employees and of duties imposed on defendants by Title III, the practices furthering the illegal objects are also illegal. The practices set out in the prayer further the illegal object and are enjoinable. These practices are (prayer, pages 30-33):

1. The financing of the company unions at the expense of the Pennsylvania Railroad System and the service of officers of the system on the controlling committees of these company unions.
2. The control exercised by the defendants over designation by employees of representatives (establishing election districts and rules) printing and distributing ballots and financing these elections.
3. Permitting the coercion of employees into voting at these elections and into becoming members of the company unions.
4. Conferring with the committees of these company unions as representatives of employees.
5. Refusing to confer with the appellant systematically as representative of its members, station and clerical employees of the system.

6. Refusing to confer with the appellant regionally as representative of the clerical employees of the Northwestern and Southwestern regions.
7. Refusing to confer with appellant as representative of the station employees of the Central, Northwestern and Southwestern regions.
8. Representing that the "regulations" in effect were agreed to by the employees concerned.

Because these practises are subversive of a regulation of interstate commerce by Congress.

It is submitted, also that these practises are subversive of Title III considered as a regulation of the employment status of officers and employees of interstate carriers. This Congressional regulation clearly contemplates and is based on free collective action for a lawful object by employees and by the employing carrier, the creation of a dispute through such action, the free designation by each party of representatives to confer with the other, to refer the dispute, if undecided in conference, to the Labor Board, to present the dispute to the Labor Board, to ask for compulsory process, if necessary, and to ask for a contempt finding if necessary.

The by-laws of the "associations of employees" (Record, pp. 113-127, 142-162, 311-317) are regulations of the same subject matter regulated by Title III and inconsistent and subversive of it. Specifically, the powers given the regional joint committees over the designation of representatives of employees, over the reference of disputed to the Labor Board, over amendments and, indeed, over the entire functioning of the association by means of financial control and otherwise, are clearly and palpably subversive of the Congressional regulation. It is conceded that employees and management may legally, by agreement through representatives, establish methods of handling disputes. These methods, however, may not be destructive of the Congressional method, but may be

supplementary thereto. This limitation exists for the reason that Title III establishes the right of the public as well as of employees to the performance of duties imposed on the employer and to the preservation of opportunity to utilize Title III methods. Even duly designated representatives of employees may not contract away this right.

Assuming that the so called representatives, who agreed to the establishment of these associations and their by-laws, were duly authorized, these associations and by-laws are illegal insofar as they are subversive of Title III regulations. They are, in fact, entirely subversive. Nevertheless, the only relief asked in this connection is the removal from them of financial support by the management and the removal of participation by the management in the controlling committees, together with the removal of interference by the management in the designation of representatives by employees.

Title III a paramount regulation of master and servant relation in the service of interstate carriers.

Title III of the Transportation Act of 1920 is a regulation of the employment status of officers and employees of interstate carriers. It attaches to that status in the interest of the public certain duties and correlative rights. Practices of an interstate carrier in violation and obstruction of these duties and rights may be enjoined by a court of equity at the suit of interested employees.

The duty to confer, etc., is mandatory.

The enactment is in the exercise of the power of Congress to regulate interstate commerce. To the end that such commerce be not interrupted by labor disputes Congress has attached to the employment status duties and

rights, the performance and exercise of which tend to further the end stated. Section 301 makes it the duty of all officers and employees to exert every reasonable effort and adopt every available means to avoid interruption to operation growing out of any dispute between the carrier and its employees. More specifically, this section makes it the duty of officers and employees to designate representatives to confer on such disputes and to decide them in conference if possible. If the dispute is not decided in conference, it is made the duty of the parties to refer it to the Railroad Labor Board for decision. The words used are imperative; legal duties are imposed. Since the case of *Martin* vs. *Hunter*, 1 Wheaton 304, 328, the use of the word "shall" in a Federal statute connotes a mandatory duty. Here, too, the word "duty" is also employed.

The construction urged does not unlawfully restrict liberty of contract or otherwise transcend the powers of Congress.

Congress has regulated the relation of master and servant in interstate commerce in a long series of statutes which govern this relation in many aspects and this court in its decisions on these statutes has removed doubts of the constitutional powers of Congress to impose the duties claimed to be specified in Title III.

The First Employers Liability Cases held unconstitutional the Act of July 11, 1906, which abolished the fellow servant rule and otherwise altered the master and servant relation in interstate commerce, for the reason that it regulated intrastate as well as interstate commerce (207 U. S. 463). This court held, however, that the regulation did not unwarrantably restrict liberty of contract (pp. 491-494-495).

In the Second Employers Liability Cases (223 U. S. 1) this court held constitutional the Second Employers

Liability Act of April 22, 1908 which regulated the relation of master and servant engaged in interstate commerce by altering the law with regard to fellow servants, assumption of risk, contributory negligence and right of action for death. It was again expressly held that the act did not unduly restrict liberty of contract. This court said (p. 48):

> "Congress can undoubtedly do anything, which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption. * * * If the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous these bad conditions may and often will prevent the act of commerce or make it less expeditious, less reliable, less economical and less secure. Therefore, Congress may legislate about the agent and instrument of interstate commerce and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such regislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act."

In Title III of the Transportation Act of 1920, Congress intended to secure the opportunity to employees to present their views as to wages or working conditions to their employers through representatives of their choice, thus enabling them to act toward the removal of wrong and disadvantageous conditions. It was believed that such an opportunity, together with the right of reference to the Labor Board, would reduce the interruption of operation by strikes.

Title III by implication prohibits devices in evasion of its requirements.

The decision quoted from (223 U. S. 1) further states that Congress has power to insure the efficacy of its regulation by prohibiting any contract, rule, regulation or device in evasion of it (p. 52). While Title III does not expressly prohibit obstructive practises it does so by irresistible implication. The imposition of mandatory duties is tantamount to the prohibition of practises inconsistent with those duties.

P. B. & W. Ry. *v.* Schubert, 224 U. S. 603, holds that Congress has power to insure the efficacy of the Employers Liability Act by prohibiting contracts, rules, regulations and devices in evasion of it. This decision struck down a stipulation of the railroad company that acceptance of benefits under contracts of membership in relief departments was equivalent to release from liability.

In C. B. & Q. *v.* U. S. (220 U. S. 559) and in Baltimore etc. *v.* Interstate Commission (221 U. S. 612)—civil actions for penalties—this court upheld the Hours of Service Act (16 hour law—March 4, 1907) which regulates master and servant relations in interstate commerce by making it unlawful for carriers to permit train employees to remain on duty longer than sixteen or despatchers thirteen hours.

Title III by necessary implication secures to interested employees the right to enjoin devices in evasion of its requirements.

In Sou. Ry. *v.* U. S., 222 U. S. 20, the Safety Appliance Act (March 2, 1903) was sustained, following Johnson *v.* Sou. Pac. Ry., 195 U. S. 1. This act regulated the master and servant relation by imposing the duty on the employer of equipping cars with automatic couplers, thereby creating a liability for the breach of that duty.

In Texas and Pacific Ry. *v.* Rigsby, 242 U. S. 33, this court held that the employee of a carrier subject to the

provisions of the Safety Appliance Act injured through a violation of its provisions had a right of action thereunder although such right was not given by express language. The court said (p. 39):

> "A disregard of the command of the statute is a wrongful act and where it results in damage to one of the class for whose benefit the statute was enacted, the right to recover damages from the party in default is implied, * * *. This is but an application of the maxim—*ubi jus ibi remedium.*"

The appellant submits that the practises of the defendants sought to be enjoined disregard the command of Title III (Sec. 301) and have resulted and will continue to result in irreparable injury to the appellant and to its principals. The right to enjoin such practises is implied.

Congress in the Adamson Act (Sept. 3, 1916) further regulated the relation by making eight hours the measure and standard of a day's work for employees engaged in train operation. This regulation was sustained by Wilson *v.* New, 243 U. S. 332, where this court held that the right of the parties (the employer and employees) to agree as to a standard of wages free from legislative interference did not affect the lawmaking power to protect the public right and create a standard of wages resulting from a dispute as to wages and a failure, therefore, to establish by consent a standard (p. 353).

In Adair *v.* U. S., 208 U. S. 161 this court held unconstitutional Section 10 of the Act of June 1, 1893, (30 Stat. 424). This section made it a criminal offense for an officer of a carrier engaged in interstate commerce to discharge an employee solely because of his membership in a labor union. It was held that the relation between membership of an employee in a labor union and interstate commerce was not real and substantial and, therefore, that the regulation could not be sustained, and

that furthermore the statute was an unwarranted restriction on the liberty of the contract of employment. There were strong dissents from this decision. However, its doctrine does not cover the case at bar. Title III imposes no criminal liability and the present case does not bear on the power of a carrier to discharge an employee for membership in a labor union.

When Congress has entered a field of regulation within its paramount authority inconsistent regulations within the same field, whether those of state statutes, of state courts or of carriers, must yield.

Texas and Pac. Ry. *v.* Rigsby (*supra*),
Spokane *v.* Campbell, 241 U. S. 497,
Atchison, etc. *v.* Harold, 241 U. S. 371,
Wilson *v.* New, 243 U. S. 332.

The history of the times shows that Congress intended to secure the opportunity to employees to confer with their employers through representatives and to preserve the status quo pending decisions of the arbitral body.

President Wilson in delivering his annual message to Congress in December, 1916, said:

> "I would hesitate to recommend, and I dare say the Congress would hesitate to act upon the suggestion should I make it, that any man in any occupation should be obliged by law to continue in an employment which he desired to leave. To pass a law which forbade or prevented the individual workman to leave his work before receiving the approval of society in doing so would be to adopt a new principle into our jurisprudence which I take it for granted we are not prepared to introduce. But the proposal that the operation of the railways of the country shall not be stopped or interrupted by the concerted action of organized bodies of men *until a public investigation shall have been instituted which shall make the whole question at*

issue plain for the judgment of the opinion of the Nation is not to propose any such principle. It is based upon the very different principle that the concerted action of powerful bodies of men shall not be permitted to stop the industrial processes of the Nation, at any rate before the Nation shall have had an opportunity to acquaint itself with the merits of the case as between employee and employer, time to form its opinion upon an impartial statement of the merits, and opportunity to consider all practicable means of conciliation or arbitration. I can see nothing in that proposition but the justifiable safeguarding by society of the necessary processes of its very life. There is nothing arbitrary or unjust in it unless it be arbitrarily and unjustly done. It can and should be done with a full and scrupulous regard for the interests and liberties of all concerned as well as for the permanent interest of society itself."

To accomplish the object stated by the President, Title III imposes the duty of preserving the status quo until the Labor Board can hear and decide.

The development of legislation in this field tends to show that Congress intended in Title III to preserve the status quo pending decision and to protect the collective processes necessary for the utilization of the act.

Previous Legislation: The first act in the field of arbitration was that approved October 1, 1888 (25 Stat. 501), following the Knights of Labor railroad strike of 1885. This act is entitled "An act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate commerce." This act provided "that whenever differences or controversies arise between railroad and other transportation companies engaged in the transportation of property or passengers * * * and the employees of said railroad companies, which differences or controversies may hinder,

impede, obstruct, interrupt or affect such transportation", if, upon the written proposition of *either party* to the controversy to submit the differences to arbitration, the other *party* shall accept the proposition, then each of the *parties* shall select and appoint one person, and the two thus selected and appointed shall select the third, and the three shall constitute the board. The board was authorized to conduct hearings at which the parties had the right to be represented by counsel, and "after concluding its investigation said board shall publicly announce its

This act was not utilized in the great Pullman strike of 1894 (see In re Debs, 158 U. S. 564). It is referred to here for the purpose of showing the court that this first act provided for submission of the dispute by the *parties to the controversy.* There can be no parties to the controversy without organization. Organizations, of course, can only act through their representatives.

As a result of the Pullman strike, Congress enacted the Erdman Act (June 1, 1898, 30 Stat. L. 428). This act provides that whenever a controversy concerning wages, hours of labor or conditions of employment shall arise between a carrier and its employees seriously interrupting or threatening to interrupt the business of said carrier, the Chairman of the Interstate Commerce Commission and the Commissioner of Labor, shall, at the request of *either party to the controversy,* put themselves in communication with the parties and shall endeavor to settle the same by mediation and conciliation. If this effort shall be unsuccessful, these officers shall at once endeavor to bring about an arbitration of the controversy, the arbitration to be by a board of three, one to be named by the carrier, another by the labor organization, and the two shall select a third. *Pending the arbitration the status existing immediately prior to the dispute shall not be changed.* Employees dissatisfied with the award shall not quit the service before the expiration of three months

without giving thirty days' notice. The employer dissatisfied shall not dismiss any employee before the expiration of three months without giving thirty days' notice. The right was given to secure specific performance of the award in a court of equity.

The Newlands Act of July 15, 1913 (38 Stat. 63) entitled "An Act to provide for mediation, conciliation and arbitration in controversies between certain employees and their employees", provides more details as to procedure. Procedure in the courts with respect to the enforcement of the award are substantially those of the Erdman Act.

In 1920, it being necessary to legislate with regard to the termination of Federal control and an urgent request having been made by some two millions of railroad employees through their organizations for increases of wages, aggregating $800,000,000, Congress had before it legislation to provide machinery for the settlement of that and future disputes. The two Houses having disagreed with regard to the bill, each appointed managers to confer. On February 21, 1920 the managers on the part of the House made a statement with regard to the conference report. This report was adopted and it became Title III (Congressional Record, Vol. 59, Part 4, Sec. 3260, Title III, 3262). A portion of this statement follows:

> "The House Bill made it the duty of carriers and employees to take all possible means to adjust their differences in the first instance before referring the dispute to any adjustment board. The Senate amendment had no provision upon this subject. The conference bill contains a declaration similar to that in the House Bill *directing the officers of the carrier and their employees to appoint representatives to confer on all matters of dispute.*" (This statement is printed in the Appendix to this brief).

The Newlands Act, which only authorized and encouraged conference, was in effect. In view of the extreme urgency of the situation it was considered necessary by Congress *to require* conferences and *to require* the appointment of representatives and *to require* the maintenance of the status quo (following the Erdman Act and the quoted recommendation of President Wilson) until the Labor Board could be appointed and could hear and decide. Hence the mandatory character of Section 301.

Title III protects the processes necessary for the appointment of representatives.

By irrestible implication section 301 makes it the duty of all officers and employees of interstate carriers to refrain from obstructing the performance of the duties which it imposes, e. g., to refrain from obstructing the designation of representatives by the other party and to refrain from obstructing the processes whereby classes of employees may formulate, present and refer disputes. In view of the Adair case Congress probably could not penalize the discharge of an employee for union activities. It could, however, provide that so long as employees remain in the service and as an incident of that service they should be invested with the legal right to formulate disputes, designate representatives, confer with the employer and refer the dispute to the Labor Board if necessary. So long as employees were in the service they should have the legal right to function with regard to Title III; to designate as representatives organizations capable of utilizing its procedure, equipped with processes whereby the collective will of the class could be ascertained, presented and conducted through conference and before the Labor Board. Organizations able to finance such procedure are essential. Without money the necessary data cannot be collected or the case presented. Furthermore, the word "party" in a statute providing

for the settlement of wage disputes of large bodies of railroad employees connotes organizations of employees and organizations not controlled by the other party, the management. "Party" is used throughout the statute. The word "dispute" also must connote "party" and hence organizations of employees.

Sec. 15a also in effect prohibits the practises sought to be enjoined.

Other sections of the Transportation Act are inconsistent with the use of funds of interstate commerce carriers and the time of their managements to control and maintain employee organizations. Section 15-a requires the Interstate Commerce Commission to adopt such rates that railroads under honest, economical and efficient management will be enabled to earn a fair return on the value of property used in the service of transportation.

It is submitted that subsidizing sham employee organizations and the use of railroad funds for false propaganda to deceive employees and the American people is not honest, economical or efficient. The use of railroad money to support machinery which has the effect of preventing reference to the Labor Board is assuredly inconsistent with Section 15-a. Such use of railroad funds is an injury to the public because it reduces the sums available for the service of transportation and makes necessary pro tanto an increase of rates in order to provide earnings sufficient not only to cover operating expenses and a fair return, but also the expense of pseudo organizations and false propaganda. The use of railroad funds for said purposes is also an injury to the Government of the United States as such use increases operating expenses and thereby reduces what the United States may recapture.

The "plan" of the defendants insofar as it is obstructive of the Congressional Regulation (Title III) is an unlawful conspiracy.

Its purpose was and is to prevent utilization of Title III by employees and to evade the performance of duties imposed on the management by Title III.

Pettibone *v.* U. S., 148 U. S. 97,
Duplex *v.* Dearing, 64 U. S. 465.

These cases define an unlawful conspiracy to be a combination of two or more persons by concerted action to accomplish an unlawful purpose or a purpose not in itself unlawful by unlawful means.

Concert of action appears from the record and is admitted by defendants.

As the purpose of the defendants was and is unlawful, the means applied by them to effectuate it are also unlawful and may be enjoined.

In re Debs, 158 U. S. 564,
Swift & Co. *vs.* U. S., 196 U. S. 378,
Duplex *v.* Dearing, 254 U. S. 465,
Union Pac. R. R. *v.* Ruef, 120 U. S. 102,
U. S. *v.* Railway Emp. Dept., 286 Fed. 228.

The practises complained of are also unlawful because in violation of Section 19 of the Criminal Code.

Section 19 provides:

> "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States or because of his so having exercised the same, they shall be fined not more than $5,000 and imprisoned not more than ten years * * *."

It is submitted that the obstruction of the rights conferred on the appellant's principal by Title III fall within the prohibitions of Section 19.

See Smith *v.* U. S., 157 Fed. 721 (criminal prosecution for peonage under Sec. 19). The court said (p. 725):

> "A right which has been conferred by law is manifestly secured by that law."

The right of employees to utilize Title III was conferred and is secured by that Title.

In U. S. *v.* Moore, 129 Fed. 630, the court held that the right of employees to organize unions is not protected by Section 19, as the protection of this right is left to the States by the Constitution. This, however, was prior to the passage of the Transportation Act and organizations to utilize regulations of interstate commerce is not within the doctrine of that case.

It is submitted that with regard to employees in the service of interstate commerce Congress has the power to protect the right to organize into unions at least to the extent necessary for the utilization of Title III.

Ex Parte Yarborough, 110 U. S. 651, holds Section 19 protects the right to vote for electors and members of Congress.

U. S. *v.* Cruikshank, 92 U. S. 542, holds that section 19 protects the right to petition Congress for a redress of grievances.

Logan *v.* U. S. (144 U. S. 263) construes Section 19 to protect the right of every officer of the United States or persons kept in its custody in the administration of justice to be protected from violence.

U. S. *v.* Lancaster, 44 Fed. 885, holds the right to resort to courts of the United States thereby protected.

In re Quarles, 158 U. S. 532, holds the right protected to communicate to any officer information of an offense against the laws.

The employees of the Pennsylvania Railroad System are prevented by the practises of the defendants from communicating to the Labor Board formal information (a dispute) as to wages and working conditions.

U. S. *v.* Waddell, 112 U. S. 76, holds that section 19 protects the right to enter a homestead upon the public domain and live upon it for the purpose of protecting the entry.

Hedges *v.* U. S., 203 U. S. 1, holds that Section 19 does not protect the right to make contracts because that right is secured not by Federal but by State laws.

U. S. *v.* Morris, 125 Fed. 322, holds the right of negro citizens to lease and cultivate land to be within the protection of the Statute.

Baldwin *v.* Frank, 120 U. S. 678, holds that citizens and not aliens are protected by Section 19.

U. S. *v.* Gradwell, 243 U. S. 476, holds that the right to be nominated as a Senator of the United States is secured by the laws of the States and not by those of the United States—hence the right to be voted for at a primary is not secured by Section 19.

U. S. *v.* Moseley, 238 U. S. 233, holds the right of citizens to vote for members of Congress to be within the protection of Section 19. The opinion contains a history of the Section. Enacted to protect colored citizens against the Ku Klux Klan, the Supreme Court, nevertheless, held it applicable to other conspiracies, saying:

> "We cannot allow the past to so effect the present as to deprive citizens of the United States of the general protection, which on its face it most reasonably affords." (p. 388).

It is submitted that Section 19 may well be applied to protect rights assailed by highly placed raiders who mask themselves under sham employee associations and other paraphernalia.

U. S. *v.* Stone, 188 Fed. 836 at 840, holds that "unlawfully" to deprive a citizen of the United States of his right to vote at a Congressional election is to injure him in the ordinary use of the word "injure". The opinion quotes the Waddell case as follows:

> "The Supreme Court has said of this Statute that it covers any conspiracy to prevent the exercise of any of the rights protected by it or to throw obstruction in the way of exercising such right, or for the purpose or with the intent to prevent its exercise."

See also U. S. *v.* Wheeler, 254 U. S. 281, where it is held that the Constitution does not protect the right of citizens of the United States to free residence, ingress and regress in the States against conspiracies by individuals but only against discriminations by States.

Practises of defendants illegal by force of Section 37.

It is also submitted that the acts sought to be enjoined are illegal by force of Section 37 of the Criminal Code penalizing conspiracy to defraud the United States in any manner or for any purpose.

Hammerschmidt *v.* U. S., 265 U. S. 182, was certiorari to review a judgment of the Circuit Court of Appeals for the Sixth Circuit affirming a conviction on a prosecution for conspiracy to defraud the United States by dissuading persons, by handbills, etc., from registering for military service. This court stated (p. 188):

> "To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated

by misrepresentation, chicane or the overreaching of those charged with carrying out the governmental intention."

The Hammerschmidt case was distinguished from Haas *v.* Henkel, 216 U. S. 467. In the Haas case the court held that a conspiracy to defraud the United States included a conspiracy to obstruct or impair the efficiency or destroy the value of the operations of the Statistical Bureau of the Department of Agriculture. It is there held that acts calculated to impair the value of the reports of that bureau as fair, impartial and reasonably accurate defrauded the United States by depriving it of its lawful right and duty to promulgate official information, acquired and required by law or departmental regulation.

Among the cases holding the same doctrine are:

Hyde *v.* Shine, 199 U. S. 62,
U. S. *v.* Morse, 162 Fed. 429, (certiorari denied 216 U. S. 605),
U. S. *v.* Bradford, 148 Fed. 413 (aff'd U. S. *v.* Stone, 135 Fed. 392),
Curley *v.* U. S., 130 Fed. 322 (certiorari denied 195 U. S. 628).

It is submitted that the acts of the defendants show a conspiracy to evade the duty to designate representatives, etc., and to prevent the employees from constituting themselves a party, from designating representatives to confer, from referring the dispute to the Labor Board. The effect of these acts and of the practises sought to be enjoined is to frustrate the performance by the Board of its duty to publish to the public, to President and to the Interstate Commerce Commission the facts with regard to the disputes which would be referred to it if the duties imposed were performed.

It is submitted that deceit, craft and trickery by the defendants are amply shown. The deceitful promulga-

tion of the "plan", the fraudulent 1921 and later elections, the investiture of persons without title as representatives of employees, the creation of sham employee organizations, misrepresentations as to their character, the establishment of bylaws enabling the defendants to control these organizations, and the long series of misstatements and misrepresentations with regard to the "Plan", together with its obstructive effect on the functions required to be performed by the Labor Board show that the practises complained of are within the prohibitions of Section 37 as construed by the decisions cited. Attention is called in this connection to Section 308 of Title III which provides:

> "The Labor Board * * * (3) shall investigate and study relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights and duties of carriers and employees, and shall gather, compile, classify, digest and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this Title and that the members of the Adjustment Boards and the public may be properly informed."

It is submitted that the practises of the defendants sought to be enjoined tend to prevent the Labor Board from accomplishing its duties under this section.

Equity has jurisdiction by reason of the threat of irretrievable injury.

The practises sought to be enjoined are irretrievably injuring the property rights of the appellant and of its members. The exercise of the rights obstructed and performance of the duties refused by the defendants are valuable to the appellant and to its principals. The opportunity to confer with the employer through representatives, to refer the dispute to the Labor Board and to

secure the pressure of public opinion available through Labor Board procedure is a valuable right. Through its exercise wage rates may be increased in proper case and working conditions made less disadvantageous. The practises sought to be enjoined have had the effect and will continue to have the effect, unless restrained, of reducing appellant's income. (See Bill, Secs. 99, 102, 103, Exhibit B, p. 68.)

Courts of equity will enjoin unlawful interference with property rights.

U. S. *v.* Railway Employees Depart., 286 Fed. 479,
Hitchman Coal Co. *v.* Mitchell, 245 U. S. 229,
American Foundry Co. *v.* Tri-State Council, 257 U. S. 184,
Aiken *v.* Wisconsin, 195 U. S. 194,
U. S. *v.* Railway Employees Dept., 288 Fed. 588.

The flow of disputes is analogous to the flow of commerce.

Federal courts have frequently enjoined the removal of obstructions to the flow of commerce.

In Toledo *v.* Penn. Company, et al. 57 Fed. 730, the court granted an injunction restraining P. M. Arthur, Chief Executive of the Brotherhood of Locomotive Engineers from continuing in force Rule 12 of that Brotherhood. This rule required members of the Brotherhood to refuse to handle cars of a railroad on which a strike had been declared. Section 3, Paragraph 2, of the Interstate Commerce Act requires carriers to exchange traffic. The by-laws of the company associations in this case are analogous to Rule 12. These by-laws enable the defendants to prevent the reference of a dispute to the Labor Board which section 301 requires.

C. B. & Q. Ry. *vs.* Burlington Ry., 34 Fed. 481;
Toledo, et al. Railway *v.* Penn. R. R., 57 Fed. 730;

Coe *v.* Railroad, 3 Fed. 775;
Farmers Loan & T. Co. *v.* M. P. R. R., 60 Fed. 803;
Southern Calif. R. R. *v.* Rutherford, 62 Fed. 796;
U. S. *v.* Railway Employees Depart., 286 Fed. 228;
U. S. *v.* Railway Employees Depart., 288 Fed. 588;
G. N. Railway *v.* Brousseau, 286 Fed. 414;
Great Northern R. R. *v.* Local Lodge, 283 Fed. 557;
Gasaway *v.* Borderland, 278 Fed. 56.

The formulation, conference on and reference of disputes to the Labor Board is a necessary element in the plan of Congress to prevent interruption to operation. Their flow unobstructed by such practises as those sought to be enjoined is essential to the purposes of this Act.

The obstructions maintained by the defendants are analogous to a continuous nuisance which equity may restrain as a constantly occurring grievance.

The acts complained of are a public nuisance.

The appellants and its principals have sufficient special interest to entitle them to relief.

In re Debs, 158 U. S. 582, 586, 592;
State of Penn. *v.* Wheeling Bridge Co., 13 Howard 518.

In the Wheeling bridge case the State of Pennsylvania sought an injunction against the Wheeling bridge on the ground that it was a public nuisance and also constituted a private injury to the State. It was held (page 563) that "a proceeding on the ground of a private and irreparable injury may be sustained against it (the main-

tenance of the obstruction) by an individual or corporation. The injury makes the obstruction a private nuisance to the injured party and the doctrine of nuisance applies to the case where the jurisdiction is made out the same as in a public prosecution. If the obstruction is unlawful and the injury irreparable by a suit at common law the injured party may claim the extraordinary protection of a court of chancery."

In Georgetown *v.* Alexandria Company, 12 Peters 98, this court said:

> "A court of equity also pursuing the analogy of the law that a party may maintain an action for special damages even in case of a public nuisance will now take jurisdiction at the instance of a private person where he is in imminent danger of suffering an injury for which under the circumstances of the case the law would not afford an adequate remedy."

Justice Story says (2 Story's Equity, 203):

> "A court of equity will not only interfere upon the application of the Attorney General, but also upon the application of private parties directly affected by the nuisance."
>
> "In regard to private nuisances the interference of courts of equity by injunction is undoubtedly founded upon the ground of restraining irreparable mischief or of preventing interminable litigation or of preventing multiplicity of suits." (p. 204)
>
> "There must be such an injury as from its nature is not susceptible of being adequately compensated by damages at law, or such as from its continuance or permanent mischief must occasion a constantly recurring grievance which cannot otherwise be prevented than by an injunction." (p. 207)

The right of private individuals suffering special damage by reason of obstructions to highways to an injunction is well established.

See

U. S. *v.* Rindge, 208 Fed. 611,
Machall *v.* Ratchford, 82 Fed. 41.

IV. SUMMARY AND CONCLUSION

The injunction sought should issue.

The practises of the defendants, if not restrained, will destroy the purposes of Title III.

If interstate commerce carriers may continue to maintain and control sham employee organizations, to constitute their officers exclusive representatives of employees, to maintain in effect agreements fixing wage rates and conditions of employment for many thousands of employees made with these pseudo representatives as the contractual act of the employees, and to prevent reference of disputes to the Labor Board, then obviously the utility of Title III is at an end with regard to the employees of such carriers.

This situation exists today on the Pennsylvania Railroad System; the management, by the practises sought to be enjoined, for almost four years has deprived at least 33,000 shopmen, 27,000 clerks, 13,000 station employees and 35,000 maintenance of way men of the benefits of the Act.

The Pennsylvania management, assuming to know better than Congress how to avoid strikes, maintains in effect a plan subversive of the method prescribed by law. It asserts the right to take the risk of strikes despite the public interest in uninterrupted operation.

Their "Plan" has been the cause of at least one very serious strike whereby the public interest has suffered grave injury. On July 1, 1922, 30,000 Pennsylvania shopmen struck for the rights secured to them by this Act. On October 3, 1921 these shopmen voted "yes" on the following question: "In the event that the Pennsylvania Railroad System refuses to comply with decision No. 218 of

the Railroad Labor Board, shall a strike be authorized on a date to be later set?"

The illegal practises of the defendants were also a heavy contributing cause of the nation-wide shopmen's strike of 1922 which seriously interrupted transportation for many months, cost the public at least five hundred million dollars, dislocated industry, and caused suffering to millions of people.

The practises of the defendant have been imitated by a number of railroad managements. The utility of the act and the prestige and value of the Railroad Labor Board have been thus so seriously damaged that a large part of the body of railroad employees are demanding the repeal of the Title and the abolition of the Board. Thus the fate of the Governmental policy set out in Title III depends in great part upon the decision in this case. The success of this policy requires uninterrupted opportunity to employees to avail themselves of the provisions of the Act. When this opportunity is continuously frustrated the Act must fail.

Practically the only legislative methods other than that of Title III for the prevention of strikes growing out of railroad labor disputes are permissive or compulsory arbitration. Aside from political and social considerations, adverse to compulsory arbitration, there is doubt of the power of Congress to impose it except in an emergency (see Wilson *v.* New). Permissive arbitration has not prevented disastrous strikes. The great Pullman Strike of 1894 (see In re Debs) occurred despite the Arbitration Act of 1888, which was enacted as a result of the Knights of Railroad Labor Strike in 1885. In 1916 it was necessary for Congress to intervene directly and compulsorily to arbitrate the dispute then unsettled between the Railroad managements and the train service employees—and this although the Newlands Act providing for arbitration was in effect and available (see Wilson *v.* New).

The Newlands Act was also in effect in 1920 when another dispute between two million railroad employees and the Director General of Railroads was alarming the country.

As a substitute for compulsory arbitration and as a step in advance of entirely permissive arbitration, Congress enacted Title III which requires the preservation of the status quo pending decision by the arbitral body and imposes the duty on the parties of designating representatives and the duty of conference. By this enactment the strike then imminent was prevented and a settlement arrived at.

The letters of the President stating the situation are set out in Appendix C.

In 1922 despite Title III the great nation-wide shopmen's strike took place. This strike was occasioned by a nation-wide conspiracy by railway executives to destroy the employee organizations. The conspiracy was initiated contemporaneously with the termination of Federal control. In its proceeding No. 12066 the Interstate Commerce Commission found that the defendant management in 1920 had contracted out for repairs at the Baldwin and other outside shops three hundred locomotives, at the same time laying off many thousands of their own shopmen. The Commission found that the defendant management paid for the work over $3,000,000 more than it would have cost in their own shops. The only conceivable motive for this action was the destruction of the shopmen's organization. Later other managements took action having obviously the same aim. (See Contracting Out cases Railroad Labor Board Nos. 1078, 1079, 1080, Vol. III, pp. 544-551). In this movement the defendants were leaders and this "Pennsylvania Plan" was a portion of the means applied to further its object. This conspiracy was in defiance of the provisions of Section 301 and it might have been enjoined under that section. The right to organize

and to function through organization for the performance of the duties imposed by the act is protected thereby. However, the abuse by employers of the writ of injunction in labor disputes had resulted in the establishment of a policy on the part of employee organizations not to seek the aid of the writ to protect their rights. Hence, there was no application by employees to the Federal courts in equity to restrain the illegal acts of these railway executives. The employees preferred to resort to their legal right to use economic pressure through the strike instead of utilizing this legal remedy. The point is that although the strike took place while Title III was in effect, yet this is no argument against its effectiveness. The strike might have been prevented by enjoining under its provisions the illegal acts of these railway executives.

If employees can be brought to realize that the law of the land protects their rights as well as those of employers and that courts of equity will enjoin invasions of their rights in a proper case, a social advance will have been accomplished. In appropriate cases employees will come to waive their right to the use of economic pressure and await the action of the law.

A grant of the injunction sought herein will breathe life into Title III which is now in process of strangulation through the success of the fraudulent and illegal machinations of the defendants. It will preserve a social experiment in legislation tending to reduce the resort to force by substituting the rule of reason for calamitous strikes. It will demonstrate to employees that courts of equity will apply the principles of equity as well for them as for employers. It will show the managements of the great railroad corporations that Congress has protected the rights of railroad employees to function collectively and will tend to prevent another such conspiracy as that which brought about the shopmen's strike of 1922.

It is submitted that the principles underlying Title III are sound and should be preserved. These principles are:

> The interest of the public in industrial peace on railroads—not a peace enforced by oppression, but a peace resting on reason and justice in wage rates and working conditions.
> The preservation of the status quo pending decision by the Labor Board.
> The illumination of public opinion by findings of fact by the Labor Board.

The discontent with the act expressed by the attempt to repeal it is due to:

> An unwillingness on the part of many labor leaders to recognize the right of the public to railroad service uninterrupted by strikes. In this they resemble a number of railroad executives who resent public interference with regard to rates, security issues, etc.
> The omission of interested employees and of public officers to compel obedience to the mandatory duties imposed by the act.
> Successful defiance and evasion of its provisions by a number of railroad managements.
> Mistakes of the Railroad Labor Board.

The first is not a sufficient ground for repeal. The principle of public interest is obviously accepted by the American people.

A declaration by this Court that performance of the mandatory duties imposed can be compelled by proceedings in the courts will remove the second.

The proper course to remove the third is to improve the personnel of the Labor Board.

Congress in Title III has clearly declared its policy. It is now for this Court to secure it by directing the relief prayed for.

Appendices are attached as follows:

A. The text of Title III.

B. Letters of the President of the United States setting out the situation on which Congress acted.

C. The statement of the managers of the bill on the part of the House with reference to the Conference report.

Respectfully submitted,

HENRY T. HUNT,
Counsel for Appellant.

APPENDIX "A".

Transportation Act, 1920.

(Public—No. 152—66th Congress.)

(H. R. 10453.)

Excerpt Showing.

Title III—Disputes Between Carriers and their Employees and Subordinate Officials.

SEC. 300. When used in this title—

(1) The term "carrier" includes any express company, sleeping car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

SEC. 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute.

SEC. 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

SEC. 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor

Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

SEC. 304. There is hereby established a board to be known as the "Railroad Labor Board" and to be composed of nine members as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe:

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

SEC. 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance

with the regulations of the Commission, as provided in paragraphs (1) and (2) of section 304, within thirty days after the passage of this Act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within fifteen days after such vacancy occurs, the President shall thereupon directly make the appointment by and with the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, whichever he is to represent.

SEC. 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

SEC. 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working condi-

tions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which said Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within ten days after the decision, in accordance with the provisions of section 301, of any dispute with respect to

wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provisions of paragraphs (a) or (b) of this section shall require the concurrence therein of at least 5 of the 9 members of the Labor Board: *Provided,* That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the board and copies thereof, together with such statement of facts bearing thereon as the board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scale of wages paid for similar kinds of work in other industries;

(2) the relation between wages and the cost of living;

(3) The hazards of the employment;

(4) The training and skill required;

(5) The degree of responsibility;

(6) The character and regularity of the employment; and

(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

SEC. 308. The Labor Board—

(1) Shall elect a chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Illinois, but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

SEC. 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

SEC. 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any

member thereof may require, by subpoena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply with any subpœna or in case of the contumacy of any witness appearing before the Labor Board, the board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpoena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the board, shall at all reasonable times for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the board for the purpose, shall supply to such board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the board by this title, which are in the possession of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

SEC. 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or railway board of adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12.01 a. m. March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

SEC. 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil-service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, em-

ployees, and agents, and witness fees, as are necessary for the efficient execution of the functions vested in the board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the chairman of the Labor Board.

SEC. 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board, for defraying the expenses of the maintenance and establishment of the board, including the payment of salaries as provided in this title.

SEC. 316. The powers and duties of the Board of Mediation and Conciliation created by the Act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

APPENDIX "B".

LETTERS OF PRESIDENT STATING SITUATION.

(1)

THE WHITE HOUSE.

WASHINGTON, D. C., February 13, 1920.

GENTLEMEN: I address you as the Chief Executives of the largest railroad organizations, which are among the most important industrial democracies in the country. I ask you to bring this message and its enclosure to the attention of your members on all the railroads, to the end that they, at first hand, may understand the Government's views as to the present situation. I am confident that with this personal understanding on their part they will see that the position of the Government is not only just to all interests, but is, indeed, unalterable, and also protects the interests of the railroad employees. The fundamental theory of labor organizations is that their membership is intelligent and capable of reaching enlightened conclusions, and I think it is of paramount importance at the present time that this great body of American citizens shall have the fullest opportunity personally to consider the national problem of railroad wages in its national aspect and shall not in the absence of this opportunity form erroneous impressions on the basis of local or fragmentary information.

I have received two letters on this general subject signed by all but two of the executives to whom this letter is addressed. I have read these letters with the greatest care and have taken them fully into consideration.

On the 25th of last August, I publicly announced the conviction that a large permanent and general increase in railroad wages ought not to be made upon the basis of

the level of the cost of living then prevailing if that cost of living level were to be merely temporary, and I counselled railroad employees to hold their demands in abeyance until the time should arrive when it could reasonably be determined whether that level of the cost of living was temporary or not. They have patriotically and patiently pursued this course and in general have shown an admirable spirit in doing so.

I then anticipated and made it clear in my public statement that the time for determining whether or not the level of the cost of living was such as to be the basis of a readjustment of wages might not arrive until after the expiration of Federal control and accordingly gave my assurance to the railroad employees that in that event I would continue to use the influence of the Executive to see that justice was done them.

Federal control will end in sixteen days and in accordance with the policy as explained to the employees, it is now eminently reasonable and proper that I take such steps as will reassure them that their claims will be properly and promptly disposed of. This is all the more necessary because inevitably the change from Federal control to private control will in the absence of special provision involve delay in dealing with these matters which could not be otherwise than disquieting to the employees.

I wish, therefore, to announce to all railroad employees at this time that I propose to carry out the following steps:

1. In the event that in connection with the return to private control provision shall be made by law for machinery for dealing with railroad wage matters, I shall promptly use my influence and so far as such law confers power upon me, I shall promptly exercise that power, to bring about the earliest practicable organization of the machinery thus provided.

2. In the event that no such provision is made by law for dealing with these matters, I shall employ the influence of the Executive to get the railroad companies and the railroad employees to join promptly in the creation of a tribunal to take up these problems and carry them to a conclusion.

3. I shall at once constitute a committee of experts to take the data already available in the various records of the United States Railroad Administration, including the records of the Lane Commission and of the Board of Railroad Wages and Working Conditions and to analyze the same so as to develop, in the shortest possible time the facts bearing upon a just and reasonable basis of wages for the various classes of railroad employees with due regard to all factors reasonably bearing upon the problem and specifically to the factors of the average of wages paid for similar or analogous labor for other industries in this country, the cost of living and a fair living wage, so as to get the problems in shape for the earliest possible final disposition. The views of this Board will serve as a guide for me in carrying out the assurance I gave to the employees last summer that I would use the full influence of the Executive to see that justice was done them and will, I believe, be a means of avoiding what might be a long-drawn-out investigation of facts. While I propose to act at once in regard to this matter, and to avoid any delay in doing so, I shall, nevertheless, invite the co-operation of the railroad corporations and believe they will appreciate that it is to their interest, as well as to the public interest, to get these matters promptly settled.

I am sure it will be apparent to all reasonable men and women in railroad service that these momentous matters must be handled by an agency which can continue to function after March 1st, and therefore cannot at the present stage be handled to a conclusion by the Railroad Administration.

The accompanying report, which the Director General of Railroads has made to me, makes it clear that it has been wholly impracticable for the Railroad Administration to dispose of these matters up to the present time. Not only were the demands for general wage increases necessarily held in abeyance by reason of the policy announced by the Government last summer, but the demands for increases to correct inequalities were so general and far reaching as to become in themselves demands for general wage increases and were so complex and conflicting that despite continuous application on the part of the Board of Railroad Wages and Working Conditions and the other agencies of the Railroad Administration, the subjects could not be presented for even preliminary consideration by the Director General until the present month, and then in an incomplete form and with a lack of ability on the part of the Wage Board to reach an agreement growing out of the largely conflicting condition of the data as presented.

Not quite six months have elapsed since I expressed my belief and hope that the then high cost of living could be regarded only as temporary. This high cost of living (which in some respects has become even higher, but in other respects has already begun to respond to the corrective factors which have been and are at work) is the product of innumerable influences, many of them of world-wide operation. In the nature of things these readjustments could not come with rapidity. The campaign which the Government has inaugurated to aid in controlling the cost of living has been steadily gaining in momentum, will continue to be aggressively conducted, and I believe will have an increasingly beneficial effect, and this notwithstanding the fact that some of the most needed remedial measures which I recommended to Congress have not been adopted. However, preparation, consideration and disposition of these important wage mat-

ters ought not, in my opinion, to be postponed for a further indefinite period, and I believe the matters involved ought to be taken up and disposed of on their merits at the earliest practicable time.

Pending the consideration of these problems by the Director General of Railroads and by me, at least one class of railroad employees had indicated its unwillingness to await a conclusion and has announced its intention of striking. A strike of railroad employees would at any time be highly injurious to the public and particularly at this time would be harmful not only to the entire country, but to the railroad employees as well. Any interruption of transportation will, of course, have a serious adverse effect upon the industrial life of the nation at a peculiarly critical period.

Under the circumstances, therefore, I have the right to request and I do request that any railroad labor organization which has a strike order outstanding shall withdraw such order immediately and await the orderly solution of this question. The railroad men of America have stood loyally by their Government throughout the war, they must in the public interest continue to do so during this delicate period of readjustment.

I believe that every intelligent railroad employee will recognize the extreme importance of continued co-operation with the Government in this matter, and that any other course will prove not only a grave injury to the public, of which railroad labor is such an important part, but a serious blow to the important principle of collective bargaining and will merely delay rather than expedite the just and prompt solution of these important matters.

Cordially and sincerely yours,

(Signed) Woodrow Wilson.

B. M. Jewell, Acting President, A. F. of L. Bldg., Washington, D. C.

W. S. Stone, 1116 B. of L. E. Bldg., Cleveland, Ohio.

Timothy Shea, Acting President, 901 Guardian Bldg., Cleveland, Ohio.

L. E. Sheppard, President, Order of Railway Conductors, Cedar Rapids, Ia.

W. G. Lee, President, American Trust Bldg., Cleveland, Ohio.

S. E. Heberling, President, 326 Brisbane Bldg., Buffalo, N. Y.

E. J. Manion, President, Order of Railroad Telegraphers, 812 Star Bldg., St. Louis. Mo.

James W. Kline, General President, Brotherhood of Blacksmiths and Helpers, 1234 Transportation Bldg., Chicago, Ill.

Wm. H. Johnston, President, International Association of Machinists, A. F. of L. Bldg., Washington, D. C.

Martin F. Ryan, General President, Brotherhood of Railway Carmen of America, Hall Bldg., Kansas City, Mo.

Lewis Weyand, Acting President, Brotherhood of Boilermakers and Iron Shipbuilders, Wyandotte Bldg., Kansas City, Kan.

John J. Hynes, President, Sheet Metal Workers, 122 So. Ashland Blvd., Chicago, Ill.

James Noonan, Electrical Workers of America, Reisch Bldg., Springfield, Ill.

A. E. Barker, Grand President, United Brotherhood of Maintenance of Way Employees, 27 Putnam Ave., Detroit, Mich.

Jas. J. Forrester, General President, Brotherhood of Railway Clerks, Room 407, A. F. of L. Bldg., Washington, D. C.

D. W. Helt, President, Brotherhood of Railroad Signalmen of America, 728 13th St., N. W., Washington, D. C.

(2)

THE WHITE HOUSE.

WASHINGTON, 28 February, 1920.

GENTLEMEN: Your letter of the 14th instant and the subsequent arguments presented on your behalf with reference to the subject of pending claims for wage increases have had my careful consideration. The passage of the Railroad Bill by the House of Representatives on the 21st instant and by the Senate on the 23d instant, has made it evident that I could not act upon your suggestions until it should be determined whether the bill would become a law or not. It was manifest that if the bill should become a law the negotiations and consideration of the wage matter ought to proceed in harmony therewith.

The bill having now become a law, the way is open for immediate action on the wage matter in accordance with the terms of the bill. Section 301 of the bill evidently contemplates that the carriers and employees should, as suggested by you, select representatives who will thus constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of this wage problem. In accordance with the assurance I gave you last August and repeated in substance in my letter of the 13th instant, I shall at once request the carriers and the employees to join in this action. I believe such a step will go far toward clarifying and maturing the subject for final disposition. In fact, the sort of Board thus contemplated by Section 301 appears to be an appropriate substitute for the committee of experts which I have heretofore suggested, and indeed such a Board will be authorized to go further than such a committee could have gone.

While it is true that the provisions of Section 307, of the Railroad Bill, relating to the Labor Board will prob-

ably also come into operation as to this wage matter, nevertheless the Bi-partisan Board can make a great deal of progress which will materially diminish the time to be consumed by the Labor Board; and while the Bi-partisan Board is functioning, the appointment and organization of the Labor Board can be expedited.

I cannot share the apprehension of yourselves and your constituents as to the provisions of the law concerning the Labor Board. I believe those provisions are not only appropriate in the interest of the public, which after all is principally composed of workers and their families, but will be found to be particularly in the interest of railroad employees as a class.

The argument that the public representatives on the Labor Board will be prejudiced against labor because drawn from classes of society antagonistic to labor can and ought to be overcome by selecting such public representatives as cannot be charged with any such prejudices. Nor do I anticipate that the public representatives will be against wage increases because they involve rate inincreases. Not only must public representatives be selected who can be relied upon to do justice but the bill itself provides that the Labor Board shall establish rates and wages and salaries which in the opinion of the Board are "just and reasonable" and it is further provided that the entire Labor Board shall be guided by the very important standards which are provided in the law, those standards including the wages paid for similar kinds of work in other industries, the relation between wages and the cost of living, the hazards of the employment, the training and skill required, the degree of responsibility, the character and irregularity of the employment, and the correction of inequalities as the result of previous adjustments. Coupled with the direction to the Labor Board to take into consideration these important standards is the highly important direction to the Commission

to prescribe rates sufficient to admit of the payment of the reasonable operating expenses including, of course, fair rates of wages.

My hopes are that the putting into effect of these provisions with a carefully selected Labor Board, whose public representatives can be relied upon to be fair to labor and to appreciate the point of view of labor that is not longer to be considered as a mere commodity will mark the beginning of a new era of better understanding between the railroad managements and their employees, and will furnish additional safeguards to the just interest of railroad labor.

I am sure that every agency which will be involved in the creation of a Labor Board and in the conduct of negotiations fully appreciates that the wage demands are entitled to the earliest possible consideration and disposition, and therefore I do not anticipate delay in the appointment and organization of the Labor Board or in the other necessary steps.

Sincerely yours,
(Signed) WOODROW WILSON.

Messrs.: B. M. JEWELL,
W. S. STONE,
TIMOTHY SHEA,
L. E. SHEPPARD,
W. G. LEE,
S. E. HEBERLING,
E. J. MANION,
JAMES KLINE,
WM. H. JOHNSTON,
M. F. RYAN,
LOUIS WEYAND,
JNO. J. HINES,
JAMES NOONAN,
JAS. J. FORRESTER, and
D. W. HELT.

(3)

THE WHITE HOUSE.

WASHINGTON, March 1, 1920.

GENTLEMEN: In my letter of February 28th to the executives of labor organizations relative to the wage demands which your organizations have been pressing, I said, referring to the new Transportation Act:

"The bill having now become a law, the way is open for immediate action on the wage matter in accordance with the terms of the bill. Section 301 of the bill evidently contemplates that the carriers and employees should, as suggested by you, select representatives who will thus constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of this wage problem. In accordance with the assurance I gave last August and repeated in substance in my letter of the 13th instant, I shall at once request the carriers and the employees to join in this action. I believe such a step will go far toward clarifying and maturing the subject for final disposition. In fact, the sort of Board thus contemplated by Section 301 appears to be an appropriate substitute for the committee of experts which I have heretofore suggested, and indeed such a Board will be authorized to go further than such a committee could have gone.

"While it is true that the provisions of Section 307 of the Railroad Bill relating to the Labor Board will probably also come into operation as to this wage matter, nevertheless the Bi-partisan Board can make a great deal of progress which will materially diminish the time to be consumed by the Labor Board; and while the Bi-partisan Board is functioning, the appointment and organization of the Labor Board can be expedited."

I therefore request that your organization select such number of representatives as may seem appropriate to them to conduct the conference and negotiation contem-

plated by Section 301 to the end that such representatives may promptly meet in conference with the representatives selected by the railroad companies in accordance with the request I am making of them and may thus initiate the necessary proceedings.

I shall be obliged if you will advise the Director General of Railroads as to the representatives selected as here requested. As soon as he receives such advice, and advice as to the representatives selected by the railroad companies, he will arrange for all such representatives to begin their conferences and at such conferences questions of procedure can be settled and any question that may be raised as to whether the number of representatives of either the employees or carriers is sufficient can also be dealt with.

I enclose copy of my letter of this date to the Chairman of the Association of Railway Executives.

Sincerely yours,

WOODROW WILSON.

Messrs.: B. M. JEWELL.
L. E. SHEPPARD.
E. J. MANION.
M. F. RYAN.
JAMES NOONAN.
W. S. STONE.
W. G. LEE.
JAMES W. KLINE.
LOUIS WEYAND.
JAS. J. FORRESTER.
A. E. BARKER.
TIMOTHY SHEA.
S. E. HEBERLING.
WM. H. JOHNSTON.
JNO. J. HYNES.
D. W. HELT.

(4)

THE WHITE HOUSE.

WASHINGTON, D. C., March 1, 1920.

T. DEWITT CUYLER, Chairman, Association of Railway Executives, 61 Broadway, New York City.

DEAR SIR: On the 25th of last August I publicly announced the conviction that a permanent readjustment in railroad wages ought not to be made upon the basis of the level of the cost of living then prevailing if that cost of living level were to be merely temporary, and I counseled railroad employees to hold their demands in abeyance until the time should arrive when it could reasonably be determined whether that level of the cost of living was temporary or not. I then anticipated and so stated that the time for determining whether or not the level of the cost of living was such as to be the basis of a permanent readjustment of wages might not arrive until after the expiration of Federal control and I gave my assurance to the railroad employees that in that event I would continue to use the influence of the Executive to see that justice was done them.

During the month of February, 1920, the wage demands which were thus held in abeyance have been the subject of renewed and careful consideration by me. In a communication to representatives of railroad employees, I expressed the opinion that in view of the lapse of time during which the matter had been held in abeyance my judgment was that it ought not to be postponed for a further indefinite period, but on the contrary ought to be taken up and disposed of on its merits at the earliest practicable time; and I also explained that such a matter must be handled by an agency which could continue to

function after March 1st, the date of the termination of Federal control, and stated that in the event provision should be made by law for machinery for dealing with railroad wage matters I would promptly use my influence to bring about the earliest practicable organization of the machinery thus provided.

Since the railroad companies have now resumed the operation of their properties and since the Transportation Act has become a law, the way is open for the immediate handling of the wage matter in accordance with the procedure contemplated by that law.

I believe all will agree that the matter calls for the earliest disposition and for the most active and earnest co-operation to avoid any delay whatever in bringing it to a conclusion. Section 301 of the Transportation Act contemplates that the carriers and employees may and ought to select representatives who will in effect constitute a Bi-partisan Board for the purpose of attempting by conference to agree upon a solution of wage problems subject to other provisions of the law.

In view of the generality of these demands, affecting the railroad employees on all the railroads which have been under Federal control and in view of the manifest desirability and justice of the earliest possible disposition of the demands, I request that the railroad companies select such number of representatives as may seem appropriate to them to conduct the conference and negotiation contemplated by Section 301 to the end that such representatives may promptly meet in conference with representatives selected by the employees in accordance with the request I am making of them and may thus initiate the necessary proceedings.

I shall be obliged if you will advise the Director General of Railroads as to the representatives selected as here requested. As soon as he receives such advice, and advice as to representatives selected by the employees,

he will arrange for all such representatives to begin their conferences and at such conferences questions of procedure can be settled and any question that may be raised as to whether the number of representatives of either the carriers or employees is sufficient can also be dealt with.

I understand that your Association represents almost all the principal railroad companies in the country and I am proceeding on the assumption that whatever is done by the railroad companies included in your Association will for practical purposes serve as an effective and adequate dealing with the problem and that other railroad companies so far as they may be interested will speedily associate themselves with the companies of your Association in carrying the matter forward. I am therefore not undertaking to address individually all the railroad companies in the country.

I enclose copy of my letter of this date to the Executives of the labor organizations which have been pressing their demands having general relation to the railroad employees on the railroads which have been under Federal control and with which organizations the Director General and I have been in conference.

Sincerely yours,

WOODROW WILSON.

APPENDIX C.

Statement, February 21, 1920, of the managers on the part of the House at the conference on the disagreeing votes of the two Houses (Cong. Rec., vol. 59, pt. 4, p. 3260, Title III, p. 3262):

> The House bill limited the disputes which were to be considered under its labor provisions to those involving employees who are members of certain specified railroad brotherhoods and shopmen's unions. The Senate amendment provided for the consideration of disputes of all employees and subordinate officials of carriers, organized or unorganized. The bill agreed to by the conferees provides for the adjustment of disputes of all railroad employees, not only members of the four brotherhoods or the shopmen's union, but also of the other railroad labor organizations. Unorganized employees and employees of sleeping-car or express companies and subordinate officials are also included. The officials included within this last term are to be determined by the commission under the authorization of paragraph (5) of section 300.
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> The House bill established three adjustment boards, comprised of an equal number of the representatives of the specified railway brotherhoods and shopmen's unions and the railroads appointed directly by the employees and carriers. Such adjustment boards were authorized to receive disputes of any kind for consideration if both the railroad and the employees jointly agreed to submit the dispute to the consideration of the proper adjustment board. If the adjustment board, failed or refused to decide the dispute, either half of the members of the board might refer it to a corresponding appeal commission composed in the same manner as the adjustment board.
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> The Senate amendment placed disputes in two classes, those relating to wages and working con-

ditions and those relating to grievances and matters of discipline. The latter class of disputes were to be considered by local regional boards of adjustment comprised of an equal number of representatives of labor and the carriers, appointed by the transportation board from nominees presented by the carriers and their employees. There was further created and established a committee of wages and working conditions formed in the same manner. This committee had original jurisdiction over all disputes involving wages and working conditions and the power to amend or disapprove the decisions of the regional boards for the purpose of securing uniformity of practice. The Senate amendment provided special temporary tribunals for the considerations of disputes of subordinate officials. Finally, disputes as to grievances and matters of discipline which the regional boards failed to decide might be referred to the committee on wages and working conditions, and all decisions of the committee on wages and working conditions were denied effect until approved by the transportation board.

The conference bill (see section 302) permits the formation by agreement between the carriers and their employees of voluntary adjustment boards with jurisdiction over disputes involving grievances, rules, or working conditions. There is further established a railroad labor board composed of nine members appointed by the President, by and with the advice and consent of the Senate, three from nominees offered by the carriers, three from nominees offered by the employees of the carriers, and three to be directly appointed and to be representatives of the public (see section 304). The railroad labor board has exclusive jurisdiction over disputes involving wages and also of disputes involving grievances, disputes, and working conditions in case no adjustment board has been formed by the carriers and employees who are parties to such dispute. The railroad labor board has appellate jurisdiction upon its own mo-

tion or upon the request of an adjustment board in case such adjustment board is formed but fails to decide such disputes.

The House bill provided for no representation of the public upon any of its boards or commissions. The Senate amendment subjected all decisions of its tribunals to review by a public board, the transportation board. The conference bill (see section 307 (c) provides for appointment of members to represent the public along with those representing the carriers and employees upon its supreme tribunal and, moreover, requires that though a decision may be reached by a majority vote, nevertheless a decision in respect to wages is not effective unless at least one of the public representatives concurs therein.

The House bill made it the duty of carriers and their employees to take all possible means to adjust their differences in the first instance before referring the dispute to any adjustment board. The Senate amendment had no provision upon this subject. *The conference bill contains a declaration, similar to that in the House bill, directing the officials of a carrier and their employees to appoint representatives to confer over all matters of dispute.* In case of the failure of such conference the House bill provided that no dispute should come within the jurisdiction of an adjustment board unless both the carriers and the employees jointly agreed to submit it to the adjustment board. The Senate amendment permitted disputes to reach a regional board or the committee of wages and working conditions upon the application of either party to the dispute, but made no provision for any action by any tribunal upon its own initiative. The provisions of the conference bill (see section 307 (a) and (b) permit action by the railroad labor board not only upon application of either party or by petition of unorganized employees but also upon the adjustment board's or the railroad labor board's own motion.

The House bill made permanent all decisions issued by the Railroad Administration or the ad-

justment boards in connection therewith in respect to wages and working conditions. The Senate amendment had no provision upon this subject. The bill of the conferees, however (see section 312), forbids the carrier to reduce wages agreed to under such decisions during the guaranty period only.

The House bill contained no enforcement provisions, but relied on the voluntary observance by the parties of all decisions made by them. A blanket penalty was contained in the House bill, but there were no corresponding duties save that representatives upon the boards and commissions "shall" reach a decision, to which the penalty applies. The Senate amendment made extensive use of criminal penalties to enforce all decisions of its tribunals and provided for a fine of $500 or imprisonment not exceeding six months for any carrier or official thereof who fails to obey any decision of its tribunals and for any person who enters into a conspiracy to restrain the operation of trains in interstate commerce. The conference bill contains no penalty provisions for a violation of a decision of the railroad labor board, but provides that all decisions shall be given extensive publicity. There is a further provision—see section 313—that the railroad labor board may, after notice and hearing, determine whether any decision by an adjustment board has been violated by either party to which the decision applies. In case the railroad labor board determines that such violation occurs, it may make public such findings in such manner as it may determine.

The House bill provides for the transfer to the adjustment boards and appeal commissions of certain records of the board of mediation and conciliation, established under the Newlands Act, but both the House bill and Senate amendment permit the general jurisdiction of that board over all railroad labor disputes to remain. The conference bill, however, denies jurisdiction of the board of mediation and conciliation over any dispute which may be adjusted by the adjustment boards or the railroad labor board.